THE

VYUVUHARU MUYOOKHU,

AN AUTHENTIC AND COMPLETE

TREATISE,

EMBRACING ALL THE HEADS OF

HINDOO LAW,

Applicable to the Topics of

Civil and Criminal Jurisprudence,

AND

OF EXTENSIVE AUTHORITY IN WESTERN INDIA.

TRANSLATED FROM THE ORIGINAL,

BY

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OF THE BOMBAY CIVIL SERVICE.

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DEDICATION.

TO THE HONORABLE

MOUNTSTUART ELPHINSTONE,

Governor, &c. &c.

AND PRESIDENT IN COUNCIL

OF

Bombay and its Dependencies,

THIS WORK,

FORMING BUT A SMALL PART OF HIS WISE AND ENLIGHTENED PLANS

FOR THE BETTER ADMINISTRATION

OF

Civil and Criminal Justice,

AMONG THE NATIVE SUBJECTS UNDER THIS PRESIDENCY,

IS, WITH HIS PERMISSION,

RESPECTFULLY DEDICATED,

BY HIS GREATLY OBLIGED,

And very obedient humble Servant.

The Translator.

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PREFACE.

The translator of the following work, fully conscious of its imperfections, hopes that a candid statement of the motives and circumstances under which he commenced, and concluded it, may avert criticism, and save him from the imputation of presumption at least, in trying his strength at a task to which he is unequal.

Placed unexpectedly in a situation requiring some knowledge of Hindoo Law, for the examination of the *Vyuvusthas*, or expositions of civil law recorded in the courts under this Presidency, and at the same time totally ignorant of the subject, as well of the language of that law, he naturally sought for information respecting the authorities, by which the Shastrees were guided in their answers to the courts.

Very little enquiry sufficed to shew, that the *Mitakshura* and *Vyuvuharu Muyookhu* were on all occasions quoted by them. The first was found to exist in print, and a manuscript copy of the latter was procured, very incorrect, as was afterwards discovered, but which sufficiently answered the purpose of reference at the time.

Having had at various periods occasion to translate, with a Shastree's assistance, a few detached passages as tests of the *Vyuvusthas*, the Sanskrit manuscript was bound with blank leaves, and these passages entered in their proper places. The facility of reference to Munoo's Institutes, by its arrangement into chapters and verses, then led him to enter also the translations of its texts, wherever they occurred throughout, and becoming now tolerably familiar with the names of authors, he, after a tedious and somewhat laborious collocation of the subjects of Mr. Colebrooke's Digest with the corresponding chapters in the *Muyookhu*, was enabled to collect translations of almost all the texts in the fifth, and

several succeeding chapters. Filling in, by translations of his own, the comments of the author, and the remaining texts not found in the Digest, he thus completed those chapters, and considered this sufficient encouragement to continue the translation to the end. The two first chapters were next attempted, and all that could be found to apply in Sir F. Macnaghten's Treatise, published about the time, being substituted for the Translator's own version, the work might be said to be finished, with the exception of the chapter on Inheritance; since that on Ordeals, being of little or no use, it was determined not to attempt.

Had the difficulties of the Chapter on Inheritance been known at the time the translation was begun, it would certainly have put a stop to it altogether, but fortunately (it may perhaps be allowed to say, if the utility of the work be admitted), the facilities met with in the first instance had led the Translator so far, that he felt bound not to leave it undone, when so much had been got through. He enjoyed likewise advantages, which few, however inclined to be useful, would ever meet with; the four Shastrees, of the Sudur Udalut and Surat Udalut, were at his side, with one attached to himself, and he had in the mean time gained some experience in the Law, and a little knowledge of the Sanskrit lnaguage.

Drawing therefore as much as possible from the invaluable translations by Mr. Colebrooke, both of the Digest and of the works on Inheritance, and from that of the *Duttuku Mimansa*, he worked in the chapter on Inheritance, and put the finishing hand to the translation, for which indulgence is thus solicited.

The liberality of the Bombay Government has led them to extend their patronage and support to the book; at the same time it must be fairly stated, that such patronage does not involve responsibility for correctness, as the translation was submitted, in consequence of the season, in an unfinished state, and was honored with such notice, probably from a desire to hold out encouragement to others, to undertake useful works even if im-

perfectly executed, and from the personal kindness of the Head of the Government, rather than as a pledge that they were fully satisfied of its worth.

The faults of execution therefore, many as they are, rest with the Translator; he unfortunately could obtain no European aid, but would cheerfully bear the charge of rashness and incompetence, if the merit be conceded to him, of some industry, and a sincere desire to make himself useful; he seeks no further praise; censure he trusts to have disarmed.

A short account of the nature of Hindoo Law Books, and of those works which have as yet appeared in English, may assist in appreciating the real value of this now submitted.

The *Mitakshura* gives a list of twenty Sacred Authors, said to have written in ancient times upon Law (among other subjects), and whose works are entitled to equal and high veneration by the moderns. Their names are: *Munoo, Utri, Vishnoo, Hareetu, Yanyuwulkyu, Ooshuna, Ungira, Yumu, Apustumbu, Sumvurttu, Katyayunu, Bruhusputi, Purashuru, Vyasu, Shunkhu, Likhitu, Dukshu, Goutumu, Satatupu,* and *Vusishthu.*[1] Their institutes are technically termed *Smriti,* of which only a small number now exist complete, and of many only a few texts remain.

Besides these, there were institutes of the following Legislators, (considered by some perhaps of inferior authority, and therefore often termed *Oopusmriti;*) but now equally imperfect with those of their supposed predecessors. The names, and number, of both classes indeed, are very uncertain [2], the same Author being sometimes ranked with the first, and sometimes with the second class, by different modern commentators. They are: *Paithinusi, Rishyusringu, Bouddhayunu, Poolustyu, Mureechi, Gargyu, Kusyupu, Narudu, Jabali, Lougakshi, Koothoomi, Dhoumyu, Ashwulayunu, Duttu, Pruchetus, Bhrugoo, Vishwamitru, Devulu, Soomuntoo, Vyaghru,*

1—Pref. Strange's Elem. page xii. 2—Pref. to Digest, page xiii.

Sutyuvrutu, *Atreyu*, *Vutsu*. *Somu*, *Karshnajini*, *Nachiketu*, *Markundeyu*, and perhaps others.

Modern legislators seem to have composed their treatises by selecting, each, such texts from these ancient institutes as best suited their own notions, working them up with a gloss of their own, "explaining their "sense, and endeavoring to reconcile seeming contradictions, to fulfil this "precept of their great lawgiver (MUNOO chap. 2d, v. 14): "Where "there are two sacred texts, seemingly inconsistent, both are held to be "law, for both are pronounced by the wise to be valid and reconcileable."[1]

The numerous and conflicting volumes which such a system has produced, will be at once seen [2] From them, several Schools have arisen; the *Gouriyu* (or Bengal), the *Maithilu*, (or north Buhar), and the Benares, with the *Muharashtru*, and the *Dravidu*, or southern school. In all but the first, the *Mitakshura*, one of the very earliest of these compilations, is received with respect, as the chief general authority, though in each, some more modern local work is allowed to compete with it, on a few points. The most remarkable of these are, the *Muyookhu* for the *Muharashtru* and the west; the *Smriti Chundrika* for the South, of India; the *Retnakuru* and *Chintamuni*, for *Mithila*. Bengal proper alone, denies authority to the *Mitakshura*, having established for itself a totally different school, of which the *Dayu Bhagu* of JIMOOTU VAHUNU is the head. [3] The references in the Margin preclude the necessity of noticing the other treatises of these schools.

The first work in the English language on the subject, was the Code drawn up during Mr. Hastings's administration. The original, in Sanskrit, "consists, like the Roman Digest, of authentic texts, with the "names of their several authors regularly prefixed to them, and explain-

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1—Pref. Digest xi. 2—Pref. to the Digest, to the Inheritance, and to Strange's Elements.
3—Pref. to Inh: iv.

"ed, where an explanation is requisite, in short notes taken from commen-
"taries of high authority: it is, as far as it goes, a very excellent work:"—
"But, whatever be the merit of the original, the translation of it has no
"authority, and is of no other use than to suggest inquiries on the many
"dark passages which we find in it: properly speaking indeed, we cannot
"call it a translation; for though Mr. Halhed performed his part with fi-
"delity, yet the Persian interpreter had supplied him only with a loose
"injudicious epitome of the original Sanscrit, in which abstract many essen-
"tial passages are omitted, though several notes of little consequence are
"interpolated, from a vain idea of elucidating or improving the text." [1]

Upon these observations being made known to the Supreme Government, the Digest of JUGUNNATHU was, under their authority, compiled, "from va-
"rious digests, and from commentaries on the institutes of Law." But: "In
"restricting the compilation to the law of contracts and successions, he [JU-
"GUNNATHU] has omitted *the law of evidence, the rules of pleading, the rights*
"*of landlord and tenant, the decision of questions respecting boundaries, with*
"*some other topics, which should be likewise treated, for the purpose of assist-*
"*ing courts of civil judicature in deciding private contests according to the*
"*laws which the Hindoo subjects of Great Britain hold sacred.*" [2]

The great value of the Digest to English readers will be found probably, in its collection of texts, which includes, under each of its heads, all the above sacred authors. Scarcely one of those applicable to Inheritance from MUNOO has been omitted by JUGUNNATHU, and a classification, made for private use by the Translator, of all the texts of each author contained in the present translations on Inheritance, shews that the Digest contains a great many of every author not to be met with in the others. When freed from the perplexing commentary, it forms an excellent key to those Sanscrit

1—Sir W. Jones quoted in Preface, Digest IX–X.

2—Preface to Digest page XI, and to Inheritance, page II; likewise Strange's Elements, 2nd, 150.

works, of a similar nature, called *Smriti Sungruhu*, as the English version of any text may be found in a few minutes.

Sir William Jones's translation of the Institutes of MUNOO, coming in order of time between the above Code and Digest, is too famous to need notice. The opinion of it expressed in Sir T. Strange's work would, it is believed, hold good here, "that it is of authority as a text book, but no "further."

To make up for the deficiencies in the Code and the Digest, Mr. Colebrooke "long ago undertook a new compilation of the law of successions "with other collections of Hindoo Law, under the sanction of the Govern-"ment of Bengal, for preparing for publication a supplementary Digest of "such parts of the law as he considered to be most useful;" and in the mean time gave to the world a translation of the two treatises on Inheritance, containing the doctrines of the two great schools, of Bengal and Benares, elucidated by notes from their respective adherents. [1]

The first of these, the *Dayu Bhagu*, is restricted in its operation to Bengal proper, as is the *Dayu krumu sungruhu*, a work of the same school, susbequently translated into English by Mr. Wynch, of which no copy has yet reached these parts.

The other, the *Mitakshura*, is equally authoritative with us on this side of India, as elsewhere, but, as previously observed, the doctrines of it are sometimes opposed by the *Muyookhu*, which is allowed to compete with it.

Two treatises on Adoption were in the same manner translated by Mr. Colebrooke Sutherland. As neither of them exist in the original in this part of the country, the Shastrees have no knowledge of them, and take the *Muyookhu* for their authority on that head. But great praise has been passed on the English version, by a high authority. [2]

1—Preface to Inheritance page III. 2—Preface to Strange's Elements, XXIV.

The work of Sir F. Macnaghten, being avowedly controversial and founded on Bengal law, is of no utility as a guide here. Every one must regret, that the two first chapters of the *Mitakshura*, those on judicial proceedings and evidence, were not given entire. Valuable as any extracts from such a work are, the insertion of the translation complete, would we may venture to say have doubled the value of this book to practical readers.

Of the last work published, the Elements of Hindoo Law, by Sir T. Strange, it is scarcely necessary to make mention, as it is in every one's hands; but if it be not too presumptuous, we may remark, that the learned author has cheerfully followed the steps, and entirely adopted the doctrine and advice, of the greatest of all European authorities on the subject of Hindoo law and literature, which is of itself sufficient to stamp a high value on the book.

Of NEELKUNTHU, the author of the *Muyookhu*, scarcely any thing is known here beyond his name, though his work is by repute acknowledged at Bunares, Bengal, and also in Tanjore. [1] Even at Poona, where one of his descendants, Huru Bhuttu Kasseekur, of great repute for learning, resided till very lately, no certain information is to be gained. The family is Deshust Muharashtru, long settled at Bunares, where Shunkuru Bhuttu, the father, [author of several very celebrated works on the Mimansa, particularly the *Dvaitu Nirnuyu*, which his son mentions] lived, and where our author was born, as he tells us in his preface, but at what date is uncertain. Huru Bhuttu above alluded to, says it was upwards of 200 years ago, whilst the general opinion is, that his writings were first circulated about 125 years ago. The manner in which, at the conclusion of the book, he speaks of himself and the dynasty under which he lived, might afford a clue, were not the authenticity of the passage doubted by some, and its meaning unknown to all. It is said that

1—Strange's Elements 2nd, 164 note.

at Bhureh, a town situated at the confluence of the Chumbul and Jumna, a Raja bearing the title of *Sunguru* or *Yooddhu sooru*, the ruler of a *Mundul*, in that part of the country, held his court: that *Bhugvunt Devu*, one of his successors, took our author under his protection, and that he, out of gratitude, gave the name of his patron to the Book thus compiled under his auspices; and that sixteen generations have elapsed since the parties flourished.[1]

Mr. Colebrooke declares him to be "an authority, concurrently with "the Mitakshura, among the Muhrattas"[2]: and, in an account of the different schools of law furnished by him to Sir T. Strange,[3] Mr. Colebrooke observed: "In the west of India, and particularly among the Mahrattas, "the greatest authority after the Mitakshura, is NEELKUNTHU, author of the "*Vyuvuharu Muyookhu*, and of other treatises bearing the same title."

These, twelve in number, were collectively styled by their author, *Bhugvutu Bhaskuru*, and in detail are generally classed as follows: 1st *Sunskaru Muyookhu*, expounding the various rites and ceremonies of a Hindoo's life. 2nd *Acharu Muyookhu*, treating of rules for conduct, in morals and religion. 3rd *Sumuyŭ Muyookhu*, of dates and astronomical calculations for regulating the chief actions of life. 4th *Shraddhu Muyookhu*, of funeral ceremonies. 5th *Neetee Muyookhu*, of the power, conduct, and duties of kings. 6th VYUVUHARU MUYOOKHU, of law and justice. 7th *Danu Muyookhu*, of religious gifts. 8th *Ootsurgu Muyookhu*, of public edifices. 9th *Prutishtha Muyookhu*, of the consecration of the same. 10th *Prayuschittu Muyookhu*, of penance and expiation. 11th *Shooddhi Muyookhu*, of purification. 12th *Shantee Muyookhu*, of planetary influence and worship.

1—For this account I am indebted to a kind and valued friend, Captain H. D. Robertson, Collector of Poona, who has also most materially assisted me by procuring translations and explanations of doubtful and disputed passages from the Poona Pundits.

2—Preface to Inheritance page iv. 3—Strange's Elements 1st, 315.

The present one, the VYUVUHARU MUYOOKHU, is strictly speaking the only one touching upon law. Its doctrines are quoted and alluded to with approbation by Mr. Colebrooke in more than one place in his translations, and by Mr. Sutherland in the *Duttuku Mimansa* and *Chundrika*; and appears, particularly in the concluding chapters, to be rather of the nature of a *Smriti sungruhu*, or general collection of texts, without much commentary, than of those books, elucidating the doctrines of one favourite author [like the *Mitakshura* on YANYUWULKYU] by a perpetual gloss, interspersed with a few texts out of the other institutes.

The reference to the authorities, troublesome as many may find them, are not without value, having been given as vouchers for the correctness of the version, as well as to guide those referring to the *Muyookhu* on business, to the particular page of the work where each text is to be found. The example of Mr. Colebrooke warrants this: In the cases of Sir T. Strange's elements, vol 2nd, explained by him, the *Mitakshura* and Digest are quoted indiscriminately in many places. But it is necessary, with regard to chapter fourth on inheritanee, to explain, that the reading of the *Mitakshura* has, for reasons stated, always been retained in preference either to *Jimootu Vahunu*, or the Digest; many of the texts however are only to be found in the two latter, or in the last one, and as NEELKUNTHU's doctrine sometimes accords with one and sometimes with the other, the reference will enable the professional reader to judge which school his author follows, still remembering, that conformity with the *Mitakshura* should be aimed at as far as consistency will allow, with which hope, the author's peculiar opinions, where he differs materially, have mostly been pointed out.

The Shastrees of the courts can at any time discover the distinction, if called upon; for in the Sanskrit edition, prepared [from five manuscripts found in Surat, collated with an old one borrowed from Poona, one from Broach, and a new copy sent from Benares] by the five Government Shas-

trees of this place, and afterwards printed at Bombay by order of Government, care was taken to insert, opposite to every text of Munoo, the number of the chapter and verse, and opposite to every text quoted from Yanyuwulkyu, the leaf and page of the Sanskrit large edition of the *Mitakshura* printed in Calcutta, of which the Courts generally have copies. The commencement of each page of the original is likewise denoted, by the Roman numerals in the margin.

REFERENCES.

Cole. Digest.	Mr. Colebrooke's Digest of Hindoo Law, Octavo edition, London reprint, 1801.
——Mit. ——Jim. Va.	His Translation of the Mitakshura, and of Jimootu Vahunu's Dayu Bhagu
——Oblig.	Colebrooke on Obligations and Contracts.
Dut. Mim. Dut. Chuud.	The Duttuku Mimansu and Duttuku Chundrika, translated by Mr. Colebrooke Sutherland.
Ellis's Lectures.	Extracted from the Asiatic Journal, vol 7th, 645 and 8th, 17-21
Essay on Bailments.	Sir William Jones's Essay on Bailments third edition, Nichols,
Munoo.	The Translation of his Institutes, by Sir William Jones.
Macnaghten.	Sir Francis Macnaghten's work on Hindoo Law.
Reports.	Of decisions by the Bombay Sudur Udalut from the institution of the court in A. D. 1800 up to May, 1824, in two vols.
Strange's Elem.	Sir T. Strange's Elements of Hindoo Law.
Tomlins.	Law Dictionary, third edition, 1820.

EXPLANATION.

Dr. Gilchrist's orthography has been adopted generally, except in the more minute parts of that system, and any deviation from it has been made with a view to simplicity. The names of Authors and Law Books are in capitals, the Italic letters being exclusively used for marking the correspondence between particular terms in the texts and gloss, and for the Sanskrit words occurring in the translation. The words between brackets are interpolations of the present, or former Translators, supplied where the conciseness of the original required explanation.

POWER OF THE VOWELS.

U as in much.	A as in march.
I —— mint.	ee —— meet.
E —— mélange, (Fr.)	oo —— moon, mood (long and short)
O —— more.	ai —— might, sleight.
ou —— mouth	

PREFACE

OF

THE AUTHOR.

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1. Salutation to GUNESU. Having declared the rules for a king's guidance [1] and having duly bowed myself before the lotos-footed Sun, I, *Neelkunthu*, proceed to compose something on decisions of law.

2. I meditate upon SHUNKURU, my *Gooroo* [whom I consider as an incarnation of him] who wears the crescent on his forehead, the lord of the bull, and consort of PARVUTI, he who gives counsel to all those who visit the holy city.

3. He [who is] the chief of men [SIVU] has assumed a double form, with a view to point out [by the simile below given, that which is correct of] the two conflicting paths [of the divisibility or indivisibility of the spirit of god] [2] SHREE SHUNKURU [SIVU] himself is one form; BHUTTU SHUNKURU is the other form here on earth, who has admitted the reasoning, that the spirit of god is indivisible [3]

4. False reasoners, deceivers, have on this point in some sort advocated the doctrine of divisibility, but it has been thrown out by me, as unfounded. For this reason, there is no deficiency of discussion on my part; for the worship of god is not the less complete for want of flowers from the sky. [a miracle].

1—In the last chapter of the Acharu Muyookhu; see a similar work, Reports 1st, 460-61, tit. Raj dhurmu
2—The one side supported by the Madhuvu, the other by the Hemadri.
3—Those holding the contrary, rejecting the doctrine of Mayu, the corner stone of the doctrine of indivisibility.

THE VYUVUHARU MUYOOKHU,

A COMPLETE TREATISE

ON

HINDOO LAW,

BY NEELKUNTHU BHUTTU.

CHAPTER I.

PROCEEDINGS AT LAW [*VUYUVUHARU MATREKA.*]

SECTION I.

Definition of Justice.

1. JUSTICE is the consistent art or practice [by a third person] of discovering the unknown point of "who is in the wrong" between two persons mutually disputing. Or that business, in which a Plaintiff and Defendant exist as the Agents, which is supported with proof, by possession and witnesses, and which admits of a fair discrimination between conflicting pleadings, is called Justice. But according to the MUDUNURUTNU: [1] "In an answer of confession, the farther [usual] proceedings in the suit are unnecessary." This is one part of the law; the other is calculated for the exclusion of [unfounded] disputes, false pleadings, and the like.

2. Now these are the divisions of it. YANYUWULKYU; [2] "When a person *aggrieved* by another, in a manner contrary to law, or approved usage, "represents it to the King, or to the chief Judge, that representation is "termed the subject of a judicial proceeding." *Aggrieved,* abused.

II.

Heads of Law.

3. Eighteen divisions of it are laid down by MUNOO: [3] "Of those "titles, the first, is debt on loans for consumption; the second, deposits

1—Followed by our author on many points, contrary to the Bunares doctrines. 2—Macnaghten, page 409.
3—Ch. 8th, vs. 4th, ad. 7th. Colebrooke on Obligations, 18, para. 36. The arrangement of the Muyookhu varies from the above, though the titles, or chapters, will be found the same, in name, and in number, by excluding the three first, or introductory chapters, and the last, on miscellaneous topics, or sundries, which make twenty-two in all.

" and loans for use; the third, sale without ownership; the fourth, " concerns among partners; the fifth, *subtraction* of what has been given; " the sixth, non-payment of wages or hire; the seventh, non-performance " of agreements; the eighth, *rescission* of sale and purchase; the ninth, " disputes between master and servant; the tenth, contests on boundaries; " the eleventh and twelfth, assault, and slander; the thirteenth, larceny; " the fourteenth, robbery and other violence; the fifteenth, adultery; the " sixteenth, altercation between man and wife, and their several duties; " the seventeenth, the law of inheritance; the eighteenth, *gaming*, with dice " and with living Creatures: these eighteen titles of law are settled as " the ground work of all judicial procedure in this world." ***Subtraction***, non-performance.—***Rescission***, repentance. ***Gaming***, [***Dyootum***] playing with inanimate agents: when with live agents, it is called *sumahvuyuh*.

4. Here, though it is said by BRUHUSPUTI: [1] " Killing a human being, " robbery, touching another man's wife, and both species of assault, com- " pose the four kinds of heinous offences," we may infer, that by reason of the distinctions in the nature of crimes, connexion with women, and assault by word or deed, are here enumerated distinct and different, from the example of a bull and bullock. But I will hereafter clearly point out the distinctions [or characteristics] of these eighteen titles of law, [each in its separate chapter].

III.

Constitution of a Court.

5. The Initials of Justice. [2] BRUHUSPUTI: " Let them erect a house in

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1—See Post, Ch. 18th,. para. 2nd.

2—Ellis's Lectures, " Part the 2nd.--Constitution of the Hindoo courts; duties of the prince as chief " magistrate; duties of the subhasudah or assessors; duties of the pratvivakuh or chief justice [who " is likened to an archon, prætor, and English judge]; several descriptions of courts; institution of " suits; inadmissible suits; plaint, how to be drawn; answer, how to be drawn; proof, by which party " to be produced; the four steps, padu, or divisions of a suit, viz. bhashapadu, and oottarupadu, " pleadings of the two parties; criyapadu, production of evidence, and sadyusiddhipadu, decision by " the decree; miscellaneous subjects connected with the administration of justice; the nature of proof, " prumanum, and its kinds, namely: human proof or evidence, munooshyu prumanum, and divine proof, " by oath and ordeal, divyuprumanum; evidence, of three kinds; namely, likhitu, writings; sakshi " witnesses; bhookti, enjoyment; nature of each briefly stated." This exactly corresponds with the twofirst chapters of the Muyookhu. Initials of justice.—Literally the " letters, or alphabet," of law.

"the midst of a fortified town, having in its vicinity water and trees; "apart from other buildings, and situated in the east quarter, with the door "on that side; there let them determine on erecting a properly constituted "*assembly house*."—Or in other words, a *court of justice*, as it has been declared by KATYAYUNU: "That place is truly termed a court of jus-"tice, where the king practises justice, discriminating between truth and "falsehood, by a reference to the *Dhurmu shastru*." MUNOO: [1] "A King, "desirous of inspecting judicial proceedings, must enter his court of jus-"tice, composed and sedate in his demeanour, together with *Brahmuns*, "and counsellors, who know how to give him advice. Without ostentation "in his dress, and ornaments, let him examine the affairs of litigant par-"ties." YANYUWULKYU [2]: "*The king*, divested of anger and avarice, and "associated with learned *Brahmuns*, should investigate judicial proceedings, "conformably to the sacred code of laws."—*The king*, is any one, whoever properly affords protection to the people, not merely one of the royal tribe or *Kshutri*.

Officers of the Court.

6. KATYAYUNU [3] "A king who investigates, together with his chief judge "[*pradvivaku*], *minister*, *brahmuns*, domestic priest, and assessors of the "court, according to law, shall attain paradise." Here, the *brahmuns* are those [*uniyooktu*] unappointed [to the court]; but the *ministers* are those appointed. Even as it has been said: [4] "A person, whether appointed or "not, is entitled to furnish legal advice."

Examiner or chief judge.

IV.

7. BRUHUSPUTI gives this definition of the chief judge [*pradvivaku*]: "He who in a cause asks the questions, and in like manner cross-examines, "and who, extracting the [desired] information, speaks first, is termed the "chief judge." VYASU shews the nature of a *minister*, or councillor [*umatyu*:]

1—Ch. 8th, vs. 1st, and [the last hemistich of] the 2nd.

2—3—4—McNtn. page 407.

"Let the king appoint as his minister, a man well informed in the meaning "of all the sciences, free from avarice, one who speaks justly, a *Brahmun* [*vipru*], wise, of a family famed of old for these qualities, being a *twice* "*born man* [*dvij*]." Here the recapitulation conveyed by *dvij*, or a *twice born man* [after *vipru*] is made, specially with a view to the choosing a minister, either from the royal or commercial tribe, in default of one of the priestly class [*vipru*]; for thus says KATYAYUNU [1] "If there be no learned *Brahmun*, "let the king then associate in the administration, a *Kshutri* or a *Vaishyu*, "skilled in the *Dhurmu shastru*; let him carefully keep a *Shoodru* [from "such affairs."]

Assessors,

8. And YANYUWULKYU thus declares an assessor [*subhyu*]: [2] "Persons "who are versed in literature, acquainted with the law, addicted to truth, "and impartial towards friend and foe, should be appointed assessors of "the court, by the king."—BRUHUSPUTI gives this enumeration of them. [3] "That assembly, in which seven, five, or three *Brahmuns*, versed in religious and worldly duties preside, is equal to sacrificial ground."

and others.

9. THE SAME author says: "Two persons must be appointed by the king, a secretary and an accountant, who are skilled in expounding *words*, and *meanings*, adepts at counting, free from error, and learned in the different characters [or dialects]" *Words*, the science of etymology. *Meanings*, a dictionary. KATYAYUNU: "Merchants who have just views of justice are to be *there* appointed hearers of causes." *There*, in the assembly. BRUHUSPUTI: "A veracious man must be specially appointed, under the orders of the assessors, for calling and taking charge, of the witnesses, plaintiffs, and defendants." And he must be none other than a *Shoodru*, even as VYASU says: "But an attentive servant must be appointed by the

v.

1—Macnaghten, page 408. There is some difference in the text here: my version is literal.
2—McNtn. page 407. 3—McNtn. page 407.

" king for collecting the materials for trial, a stout *Shoodru*, whose ances-
" tors have followed the same employment, and he shall be placed under
" the orders of the assessors." YANYUWULKYU: [1] " But if justice cannot be
" supervised by the king in person, from press of [other] business, let a
" *Brahmun* acquainted with all duties be associated with the assessors."

Their respective duties.

10. BRUHUSPUTI mentions the duties, of the king, the chief Judge, and the rest: " The chief Judge is to report the case; the king is to give the " necessary orders; the assessors are to investigate the matter [in the first " instance]; the accountant is to calculate the money [transactions]; and " the secretary is to take down the proceedings of the trial." THE SAME author says: " Let the king sit with his face to the east, the assessors " looking towards the north, the accountant facing the west, and the se- " cretary turning towards the south." YANYUWULKYU, speaking of the royal court, says further, respecting judicial functionaries: [2] " *The superintendants* " [*adhikrutah*] appointed by the prince, the *separate trades* [*poogah*], the *joint* " *companies* [*Sreni*], as well as *families* [*koolani*], must be accounted to rank " according to the order in which they are here named, in all rules of " justice among men." *Superintendants* appointed by the prince, the chief Judge and the rest. *Separate trades* [lit. a multitude] a collection of men getting their living by different trades, inhabitants of the same village, but of different cast. *Joint companies*, are the very opposite of separate trades. *Families*, an union of kinsmen, connexions, and cognate kindred. [3] BRUHUSPUTI also says: " For those who wander in forests, let *an office* be " established in the forest, that for soldiers in their quarters, and in like

VI.

1—Macnaghten, page 408.

2—Mentn. p. 433, q. v. The 'poogu,' and 'sreni' are here translated according to the commentary. 'Corporation' and 'community' might sufficiently denote them, could we divest ourselves of English associations in using those terms, to which the Hindoo societies do not in all respects conform. Mention of them occurs again at sec. 2nd, para. 2nd, and chapter 2nd, sec. 3rd, para. 6th, and in the 12th chapter, para. 3rd. They are also very clearly enumerated and elucidated in detail, by Mr. Ellis: see Asiatic Journal, v. 8th, p. 17-21, and Strange's Elem, 1st, 219.

3—Jnyati, denoting, from the context, 'kindred,' aud not 'caste.'

"manner that for the merchants, in their meetings." *An office*, a court of justice.

Court hours and days.

11. KATYAYUNU notes the time for inspecting judicial cases: "The "king shall give decisions on complaints, in the place appointed for the "court, in the first part of the day, in the way laid down in the *Shastru*, "putting down those who act inimically; passing over the first *eighth* por-"tion of the day, the period which includes the next *three eighths*, [1] is "declared by sages to be the very best time pointed out by the *Shastru* "for judicial business." Half the first watch [*yamu*] is the *eighth* of the day; the next three *eighths* are contained between that time and [the sun's reaching] the zenith. SUMVURTTU again declares the days to be set apart as unfit [for business]: "The man who is wise will not look at judicial "business on the days herementioned, the fourteenth, the new moon, the "full moon, and likewise the eighth [of each fortnight]." BRUHUSPUTI: "Let the king, sitting *there* in the first part of the day, together with old "men, his ministers and his servants, examine causes and hear them read "the *pooranus*, and the laws, the religious [*dhurmu*] as well as the *moral* "*laws*." [*urthu shastru*] *There*, in the court. *Moral laws*, the laws of equity [*neeti shastru*].

Disagreement between law and equity, or two texts of law.

12. NARUDU, on the disagreement between the religious law, and the moral law, says: "When a difference may occur between the religious law, "and the moral, then let them set aside what is declared in the moral "law [*urthu shastru*] and follow that which is enjoined by the religious, "law [*Dhurmu shastru*]." But where discrepancy occurs in the *Dhurmu shastru* itself, YANYUWULKYU says: [2] "If two texts [*smriti*] differ, rea-"son [*neeti*, or that which reason best supports,] must in practice [*vyuvuhar*] "prevail." The faults of those who do not look to the essentials of jus-

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1—At midsummer, from about seven o'clock, till about half-past eleven, A. M.

2—Digest, 2nd, 570 note.

tice, are thus declared by **Bruhusputi**: [1] " A decision must not be made " solely by having recourse to the letter of written codes [*Shastru*], since, " if no decision were made according to the reason of the law, [or according " to immemorial usage, for the word *Yookti* admits both senses] there " might be a failure of Justice." VII.

Customs of the country &c. to be upheld.

13. They should fully attend to the customs of the country [*Desh acharu*] "and the like; thus **Bruhusputi** says: [2] " Let all Rules, of each country, " cast, and family, that have been derived and preserved from ancient times, " be still observed in the same way, otherwise the subjects will rise in " rebellion, discontent will be produced among the people, and the army " and the Treasury will suffer injury. " The twice born classes, [*dvij*] in the " *Dukkhun*, take the daughter of a mother's brother in marriage. In the " *Mudhyu deshu*, they follow various professions, and are artizans, and " eaters of Kine; and in the east [*poorve*] the men eat fish, whilst their women " are notorious prostitutes. In the North, their women drink intoxicating " liquors, and women in their courses are by the men there considered fit " to be touched. These people are not deserving of Penance, or *punishment* for such acts as these. " The *Poorubees* are the same as the *Prachyus*, [3] but in some copies they read *surve*, *all*, for *poorve*, that is, *all* classes, *Brahmuns* and the rest. *Punishment* means legal correction. **Some one** here declares: " However, what is laid down by law as the penance &c, for " such acts, applies to countries which are not included among the above- " mentioned." But **Others** again say: "Punishment is to be construed of the " nature of Penance; thus the people of that country will escape legal " punishment only; and in other countries, both legal punishment and " penance will issue. "

Examples.

Reference to professional men.

14. **Vyasu** says: " If a decision cannot be obtained from the other

1—Cole. Digest. 1st, 137-8.—2nd, 128. Ellis's Lectures in Asiatic Journal, 8th, 99.

2—Reports, vol. 1st, 65-426.

3—Those on the S. E. of the river Suruswuti.

" [appointed] persons, in disputes among men who live by commerce, any " handicraft, tillage, dying, or such profession, then let the matter be tried " by those skilled in the same trade." MUNOO [1]: " Let not a prince, who " seeks the good of his own soul, [hastily and alone] pronounce the law" " on a dispute concerning any legal observance, among twice-born men " in their several orders."

VIII.

The first notice of suit or inquiry.

15. KATYAYUNU: [2] " The king should thus interrogate a person coming " before him [at a proper time, and in a respectful attitude], saying, 'Fear " not, O man, but disclose by whom, where, when, and for what cause, your " grievance arises?' He should then, in conjunction with his *Brahmuns*, and " assessors, deliberate upon the representation thus made, and should it " appear reasonable, he shall deliver to the complainant a summons, or " depute an Officer for the purpose of citing the adverse party."

Arrest, or Duress.

16. NARUDU: [3] " A person being about to prefer a claim, may arrest " his adversary [evading it, or not giving satisfaction in the matter] until " the arrival of the summons." THE SAME author declares four kinds of arrest or *Duress* [*Asedhu*]: [4] " Arrest is four fold; local, temporary, inhibition from travelling, and the pursuit of a particular occupation; the " person in confinement by one of these modes, shall not break away " from it." HE ALSO [5] declares there is a punishment for breaking through restraint, by one thus confined: " One who, being arrested at a proper " time, breaks his arrest, is to be fined." In some cases, says THE SAME author, punishment is also to be inflicted on the party putting in *Duress*: " But if a man inflicts *Duress* upon any one in an illegal mode, as " by confining [any of] his ten members [limbs, functions, or senses]; by

1—Ch. 8th. vs. 390. 2—Macnaghten, p. 410.
3—Mcntn, p. 411. Strange's Elem. 1st. 307. 4—Mcntn, p. 411.
5—Mentn, p. 411, The remaining words there appear to apply to our next text.

"stopping his speech, or breath, or the like, he is worthy of punishment; "not the man who breaks through [such illegal restraint]." NARUDU mentions an exemption from punishment in some cases of resisting *Duress*: "A person placed in *Duress* whilst crossing a river, or passing a forest, "or in a bad [place or] country, or during an affray, or in other "[distress] does not become liable to punishment, if he break through "such severe *Duress*." KATYAYUNU declares this punishment for confining one exempt from restraint; "But it is thus decreed, that he who "imprisons one not amenable to confinement, shall be punished by the king."

IX.

17. THE SAME author defines those who are exempt from confinement: "Persons standing upon a tree or hill, or situated upon an elephant, "horse, carriage, or vessel; and one standing in a dangerous place, are "all exempt from arrest by those inforcing a demand; as well as one "afflicted with sickness, and one suffering under misfortunes, and one "employed [as a minister of religion] by *Yujmans*."—"Let not the "King cause to be summoned, persons in a weak state, nor minors, old "men, persons in danger, those actually employed in religious offices "immersed in [worldly] business, those overcome with desire or "habitual estrangements, nor persons employed on the duty of the king or "of the Gods [*Ootsao*]'[1] "Nor those intoxicated, deranged, or idiotic; nor "persons in grief, nor servants. Nor a young woman who is without friends "[*Heenu pukshu*] on either side, nor any woman born of a noble "family, nor one lately delivered of a child, nor a damsel of the highest "tribe. These are termed dependent on their relations."

Persons exempt from process.

18. "But women upon whom their families are dependent, profligates, "and harlots, and those who are expelled from their families, or de- "graded, may be summoned." "Having well examined the charge, the

Those not exempt.

1—Menu, p, 410. I have altered the translation.

"King in weighty matters may summon, but in a gentle way, even those "who have withdrawn [as hermits] to the woods, and the like of them."[1] "Having ascertained the time, place, and comparative importance of "the charge, the king may summon even those who are sick, causing "them to be brought slowly *in carriages.*" In some copies, they read, *by a messenger.*

Contempt.

19. A person who, being called, does not attend, deserves punishment, Even as BRUHUSPUTI says: "Where a person possessed of relatives or "family, from arrogance neglects to go where he is called, let them "deliberate upon his punishment in proportion to the cause at issue." KATYAYUNU specifies certain grades of fine for corresponding sorts of complaints: "In petty causes, the fine shall be fifty, but in the mid-"dling, not lower than an hundred [*punus*], and in great causes, never less than five hundred."

x.

Commencement of the Pleadings.

20. PITAMUHU declares what is to be done on the arrival of the person summoned: "Let the person prosecuted be placed standing before the "Court *with* the complainant likewise—" The third case [by or *with*] is used here in the sense of *in company with.* KATYAYUNU: "Then let "the Plaintiff fully tell his case, and the Defendant immediately after-"wards; at the end of their pleadings then let the assessors [speak], and "the Chief judge after that." BRUHUSPUTI: "If the Plaintiff and De-"fendant should come, each saying, 'I was first [in suing],' let the Plaint "be registered with reference to the class of the Parties, or regulated "by the injury."[2]

Attorneys permitted.

21. "Relations, or any other man duly appointed, may undertake the

1—Menu, page 411.

2—In the [manuscript] Purisishtu, the reading is "Vado vurn unooreepenu"—In the printed one, or Veermitrodayu, "Vado vurn unoopoorvenu." In all the old copies of the Muyookhu, "Dundo vurn unooroopenu." The last they all agreed to reject; of the other two readings, the first has been followed

"Plea, or answer, for persons weak [in mind or body], idiots, madmen, "old men, women, minors, and sick people." NARUDU: "He on whose "account another is litigating, whether he be appointed [*Niyooktu*] by "the Plaintiff or sent by the Defendant, his is the victory or defeat, "by whom he is delegated." KATYAYUNU [1] however says [2]: "He is "guilty of officiousness, who is neither brother, father, son, nor consti- "tuted agent of the party; should he interfere, he is liable to amerce- "ment." But this relates to one not duly appointed.

Exceptions

22. In some cases, the absence of a Deputy is enjoined by the very SAME AUTHOR: "In [prosecutions for] killing a *Brahmun*, drunkenness, "*robbery*, adultery with a spiritual preceptor's wife, killing a man, "*theft*, [*Steyu*], [3] touching another man's wife, and also eating forbidden "things; in charges for abduction, or ruin, of a virgin, assault, and "forgery, as well as injury to the king, a *substitute* [*Pritivadi*] is not to be "given; the doer of the act shall defend his cause himself." The word *steyu* is used a second time, with a view to a more particular prohibition of an Attorney. A *substitute*, a deputy [or attorney].

XI.

Requisites of a good Plaint.

23. YANYUWULKYU points out the proceedings of the Plaintiff, when the Defendant has been brought up: "Let there be [a record] written in "presence of the Defendant, exactly what was made known by the "Plaintiff, marked with the year, month, and half month; the day, name, "Cast, and other [necessary notes]." In another SMRITI it is said [4]: "That is termed a charge, or declaration, which is significant, technical- "ly precise, comprehensive, unconfused, direct, unequivocal, conformable "to the original complaint, probable, uncontradictory, clear, susceptible

1—NARUDU in the Mitakshura. 2—Mcntn, p. 411.

3—In the original, the same word [Steyu] is used for both.

4—Mcntn, p. 412. Strange's Elements, 1st, 309.

"of proof, concise, not deficient, not adverse [to local and temporal "usages], [1] comprising the *year*, season, month, fortnight, day, hour; "*country*, situation, place, village; the complaint and its nature; the "tribe, appearance, and age of the adverse party; the weight and quan- "tity of the property in dispute; the names of the complainant, and his "adversary; the names of their respective ancestors, and of the ruling "kings; the grievance done, and the names of the original acquirer, "and grantor." The *year* and other [points] here mentioned, are declared to be of use in cases of mortgage and the like. And the necessity of sometimes noting the *country*, &c. is declared in another SMRITI: [2]

XII. "The country; place, site, tribe, name, neighbourhood, dimensions, na- "ture of the soil, the names of ancestors, and of former kings: These "ten should be specified in a suit for immovable property."

Correction of it.

24. KATYAYUNU: "Let the Chief Judge record at length the first side "of the cause, as told in the [Plaintiff's] own way, on paper, after it "has been corrected on a writing-board, in white letters." NARUDU defines the limits of correction: [3] "He may amend his declaration "until the answer is given in, but being stopped by the answer, the "corrections must cease." "But as long as the Defendant shall not "enter the answer of the Plaint, so long may the Plaintiff cause them "to write any [further] account of the matter."

Plaints inadmissible.

25. The properties of a Plaint being thus laid down, false Plaints at variance with them, are also touched upon, though well known as fictitious. Thus in another SMRITI: "Let them utterly dismiss a false suit, "*unknown* [to reason], *shewing no trespass, unmeaning, unfounded*, whether "*incapable of proof*, or *contrary*." *Unknown*, as if he said, 'Flowers from

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1—For instance, a man in central India, [Mudhyu deshu,] suing for a plantation of betel-nut trees, [knowing they cannot grow at a distance from the coast], or for mangoes, out of season, &c. Veermit, leaf 20th, p. 1st.

2—Yanyuwulkyu—Mcntu, p. 412.

3—Mcntu, page 413.

heaven have been stolen from me.' *Shewing no trespass*, as, 'He follows his business by the light of my lamp.' *Unmeaning*, as, 'What d'ye call it [*Kuchhutupum*] has been taken from me.' *Unfounded*, as, 'He living opposite to me reads with a loud voice.' *Incapable of proof*, as, 'This person laughed at me with a scowling brow,' or the like. *Contrary*, to common sense, as, 'I was abused by a dumb man.'—Plaints in opposition to the City, district, or other point, are also touched upon:[1] "That "complaint which is prohibited by the Government, or detrimental to the "interests of a City, or a country, or to the different trades-people, ci-"tizens, villagers, and merchants, is pronounced to be inadmissible."

XIII.

Exceptions

26. But that suit which contains different heads of charge, does not thus partake of the nature of a false complaint; otherwise we should have the misfortune of finding a law contrary to this of KATYAYUNU: "The King may also without doubt receive, from desire of seeking out "the truth, that cause which contains many counts, and is decidedly "admissible among legal proceedings." As for the saying, 'that a Plaint jumbling together different heads of law does not stand,' it must be understood [that the different Counts] may not be taken up at one time, but in their proper order.[2]

The answer

27. YANYUWULKYU states what is to be done when the Plaint has been thus prepared:[3] "The answer of the party who has heard the "declaration, must be written down in presence of the Plaintiff."

Answers enumerated

28. NARUDU explains the qualities of an answer:[4] "The wise have "held that to be an answer, which embraces the declaration, which is "solid, clear, consistent, and obvious." KATYAYUNU specifies four sorts

1—Mcntn, page 413.

2—A passage, apparently a text, agreeable to this is found in Mentn, p. 413.

3—Mentn, p. 413.

4—Mentn. p. 414.

of them: [1] A *denial*, a *confession*, a *special exception*, and a *plea of* "*former Judgment*, are the four sorts of answer." THE SAME author explains a *denying* answer [*Mithyotturu*]: "When the Defendant makes "denial of the claim, that should be considered in law as an answer "of *denial*." THE SAME author declares this again to be of four kinds: "An answer of *denial* is of four kinds; as 'this is false;' 'I know not "this matter;' I was not then present;' or 'I was not born at that time.'" An answer of *assent* [*Sutyotturu*] is noted in another SMRITI: "A de-"claration affirmative of the matter in dispute, is termed an assent." NARUDU exemplifies a *special exception* [*prutyuvuskundunu*]: [2] "When the Defend-"ant acknowledges the [receipt of the] sum as declared by the Plaintiff, "but alleges a consideration, it is deemed a special plea." KATYAYUNU thus propounds the *plea of former judgment* [*praunyayu*]: [3] "If a man "though cast at law, revive the suit, he should be considered as one "previously confuted, and is called an appellant from a former decision."

XIV.

Inadmissible answers

29. The properties of an answer being thus fixed, [a defective one] is also explained in another SMRITI, though the nature of an answer wanting these properties conveys intrinsic proof against itself: [4] "That is "not an answer, which is dubious, not to the point, too confined, "too extensive, or not embracing all parts of the declaration. That "which is relative to other matter, incomplete, obscure, confused, not "obvious, is a faulty answer." KATYAYUNU also says: "When an an-"swer admits the truth of the Plaint on one Count, and on another "sets up a special exception [*Karunum*] and at the same time denies a-"nother Count altogether, it is, from its mixed nature, held to be no "answer."

Onus probandi.

30. THE SAME author states the reason for this notice of a void

1—Mentn, p. 114. 2—3—Cole. Digest. 1st, 370. 4—Mentn, p. 114.

swer: [1] "For in one suit, the proof cannot rest on both parties, nor "can both obtain Judgment, nor can two answers be offered at once." Here, the meaning is this: 'In giving a flat denial and a special exception in one answer, the actions of two different plaintiffs are opposed to each other.' It has been thus declared by NARUDU: [2] "It has been "recorded, that in the case of a total contradiction, the proof rests with "the complainant; and in the case of a special exception, with his adversa-"ry." Therefore both parties in one cause [exhibiting proof] is contrary [to law.] Even so, both actions lie on the Defendant, when there is a jumbling of a special plea, with plea of former judgment; for it is said by VYASU: "In pleading a former judgment and special exception, the "Defendant must exhibit the proof." And again by THE SAME: "In plea "of former decision, it must be satisfactorily established, by exhibiting "[copy of] the Decree so gained to the Chief Judge, and the rest "likewise." Therefore, in pleading a former decision, it must be established, either by exhibition of the Decree, or by those who saw the original decree, or the like. But in an answer setting up a special exception, the defence [must be supported] also by witnesses, documents, and other proof. Here also, [proof on both sides in one cause] is contrary [to law]. The same rules must be observed also in a mixture of three or four [pleas in one answer].

XV.

31. And in these matters, the properties of a void answer arise from conjunction: for if in due order, the properties of a [valid] answer are preserved; and this order must depend upon the pleasure of the Plaintiff, Defendant, and the Assessors. And even thus HAREETU says: "When a denial aud special plea are both contained in one answer

1—Macnaghten, p. 415. On the subject of the "Onus probandi," see Bentham on Evidence, p. 257. [Ch. 16th.]

2—Macnaghten. p. 415.

" together; also a confession with any other [answer], then which [of " them] is to be taken as an answer [to that plaint]:? that which contains " the most important matter, or that wherein there is something of use " to the action, is to be considered as the proper answer, to prevent " confusion: for otherwise." 'There will be confusion' is wanting [to complete the sense].

XVI. 32. The meaning of it is this: 'In a claim for *gold* and *clothes*, when it is pleaded, that the *gold* was not received, and that the *clothes* were received and returned; first let them decide about the *gold*, and afterwards, the point relating to the *clothes* may be settled.' The same course is to be pursued, in a mixture of a denial with plea of former decision, and of the latter with a special plea. Likewise even in those disputes, where it is pleaded, 'the *gold* was received, but the *clothes* were not;' or, '[the clothes] were given back;' or [where it is said]: 'I gained a former action about the *clothes*;' the case must be tried only with respect to the *clothes*, not with reference to the *gold*. For though it is a matter of more value, yet there is no action, or proof, upon it. But in a dispute where the Plaintiff says: 'This is my cow which ran away at such a time; I saw it in his house just now:' and the Defendant answer: 'This is utterly false; even before the time set forth [in the Plaint], it was standing at my house,' it comprehends both a denial and special plea; there is no property of a void answer in this, which is an answer of denial, [at the same time] shewing cause or special exception. The action lies here with the Defendant alone; not at all with the Plaintiff. because of this text of HAREETU: [1] "When an answer involves a denial, and a special plea, the special plea is to be first con" sidered." Even so, if there be a conjunction of a denial with plea of former judgment, or of a special plea together with plea of former

1—Macnaghten, page 416.

judgment, in a suit of only one Count, it does not partake of a void answer. In both of these cases, the proof lies with the Defendant only. This is enough to shew, that in no one case can proof on both sides exist by any means.

33. YANYUWULKYU lays down the order for exhibiting the proof, after the answer has been recorded in writing: [1] "After this, let the Plaintiff immediately get them to write down the proof of the matter complained about: when that is satisfactory, he will gain the cause, but "when it is otherwise, it will be reversed." This again relates to an answer of denial, but in the other kinds of answer, the exhibition of proof lies with the Defendant alone. Thus HAREETU: [2] "For in an answer "pleading a former decree or a special exception, the Defendant shall "exhibit the proofs; in an answer of denial, the Plaintiff; but issue "cannot be had in an answer of assent."

Exhibition of proof.

XVII.

34. YANYUWULKYU mentions, that there are four feet, or requisites of a decided suit: "A decision in causes is shewn to have four quarters." And these four quarters are explained in another SMRITI: [3] "It has four divisions; namely the declaratory, replicative, probatory, and "adjudicative, and is termed quadruple." But this has reference to an answer distinct from one of assent; because in an answer of assent, there are only two members: even as BRUHUSPUTI says: "In an answer of "denial, the cause must be completed in its four members; and likewise "in a special plea; but in one confessing the claim, the suit may be "considered as complete with two members."

Pleadings enumerated.

35. YANYUWULKYU: [4] "A person complained against, not having

Retort prohibited.

1—Macnaghten, p. 449, where some little variation is found in the reading.

2—Macnaghten. p. 451.

3—Macnaghten, p. 416-17, where the whole text, of which this is only the latter hemistich, is recorded.

4—Macnaghten, p. 417.

"cleared himself, shall not retort, nor shall another charge a person "already labouring under a charge, nor shall any thing foreign to the "original complaint be introduced. But he may make a counter charge in cases of affrays, or criminal prosecutions." [1]

Exception.

XVIII.

Technical errors remediable.

36. NARUDU: [2] "That man, who forsaking his original claim, rests "on other grounds, is known for a false claimant, by reason of the "confusion of his proceedings." The meaning is, that the false claimant becomes [only] liable to punishment; he is not to be cast in his cause so laid. And this must be taken with reference to suits for money: Even as THE SAME author says: [3] "A verbal error, is not fatal in all [any] "civil actions; [for instance, in actions brought,] for seduction, for land- "ed property, or for debt, the Plaintiff is to be punished, but it does "not annul his claim." The second hemistich is added, for the sake of clearing up the first.

Receipt of Evidence.

37. YANYUWULKYU: [4] "When witnesses are adduced on both sides, "the witnesses of the ***first complainant*** [are to be examined]; If the ***first*** "***side be weak***, or wanting in that point, those of the Defendant may "be received." The ***first complainant***, the Plaintiff in the suit. ***The first side***, the Plaint. If ***it be weak;*** when there is no proof required [of the plaintiff], because of the Defendant's taking it on himself, by an answer shewing cause. The receipt of oral evidence, is put for the sake of denoting proof in other ways also.

Sureties.

38. THE SAME author says: [5] "A competent surety must be taken

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1—See chapters 16th and 18th.

2—Macnaghten, p. 417, where it is translated 'must be nonsuited;' I have made the text literal, to agree with the comment following.

3—Macnaghten, page 417.

4 Macnaghten, p. 420. 451. q. v. Here the text is made to apply to a general rule, between Pltf. and Dft.; in the Mitakshura, [Sir F. M's. authority] it is laid down for a particular case, between two claimants for the same property; and thus the Muyookhu and Mitakshura differ widely.

5—Macnaghten, p. 418. Strange's Elements, 1st, 397.

"from each party for the *decision of the dispute.*" *The decision of the dispute,* the satisfaction of the judgment. KATYAYUNU specifies who are not to be received in the matter of security: "Neither a Master, nor an "enemy; nor in like manner the master's foreman, nor one *confined,* nor "in like manner, one sentenced to punishment, nor *one of doubtful* "*character* at any time; neither *an heir,* nor *a poor man,* nor even one "*obliged to dwell elsewhere;* nor one appointed on the king's business; "nor an ascetic; nor he who is unable to liquidate the claim of the in-"dividual, and a sum equal to it, as a fine to the king; nor one unknown, "are to be taken [as sureties] in matters requiring security." *Confined,* bound in fetters, or the like. *One of doubtful character,* one addicted to particular vices. *An heir,* sons, grandsons, and others entitled to take a man's Estate. A *poor man,* one indigent. *Obliged to dwell elsewhere,* one turned out of the country. YANYUWULKYU: "But the being secu-"rity, contracting debts, and giving evidence, between brothers, as well "as between man and wife, and likewise a father and son, if they be "unseparated, is not recorded."

Inadmissible.

XIX.

39. In default of security, KATYAYUNU says:[1] "If a party be unable "to furnish a competent surety, he is to be guarded; and at the close "of each day, is to furnish wages for the payment of his guards." "THE SAME author adds: "A man of the twice born classes, who is "deficient in security, shall be guarded by men accompanying him out of "doors; but they shall confine in prison, *Shoodrus* and the other [low "Casts] who cannot give security."

Confinement in default of surety.

40. NARUDU [2] sets forth the qualities of a false Plaintiff: [*Heenu vadi*] "That man, who, entirely giving up his first ground of action, again takes

False Plaints.

1—Macnaghten, p. 418.

2—Vide ante, para. 26, Macnaghten, 417, q. v.

" up another plea, is, by reason of his passing away from one cause, " decidedly known to be a false claimant." YANYUWULKYU shews how to distinguish the party who is in the wrong: [1] "One who is constant-" ly shifting his position, who licks about *his mouth*, whose forehead " sweats, and whose countenance continually changes colour; one whose " mouth dries up, and who faulters in his speech, who contradicts him-" self often; one who does not look up, or return an answer; who

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" contorts his lips; one who undergoes spontaneous changes, whether " mental, verbal, corporeal, or actual; such person, whether making a " claim or giving evidence, is esteemed false." *His mouth*, the region of the lips.

SECTION II.

OF PROOF IN GENERAL. [*PRUMANUM.*]

Nature of proof.

1. YANYUWULKYU: [2] "Evidence is said to consist of documents, " possession, and witnesses. In the absence of all these, a divine test " is prescribed." KATYAYUNU also: [3] "When one adduces human evi-" dence, and the other appeals to a divine test, the king will, in this " instance proceed to examine the human evidence, and will not have " recourse to the divine test." "Even when human testimony is applica-" ble to only one part of the case, that is to be received in preference; " and recourse must not be had to persons willing to establish the whole

Proof, by deeds.

" case by supernatural means." Proof by ordeal is not declared, when

1—Macnaghten. p. 419.

2—Macnaghten, p. 438. Strange's Elem. 1st, 309.

3—Macnaghten: p. 439.

" living witnesses are present; and when there are deeds or documents " in a cause, neither ordeal nor witnesses shall be [resorted to]. As for " those rules which are set up by Separate trades, [*Poogah*] Joint com- " panies, [*Sreni*] Corporate bodies, [*Gunu*] and the like, the proof of " them must be written deeds; neither ordeal, nor witnesses." [1]

By Witnesses.

2. [2] " In nonfulfilment of a gift, as well as in gift, and in cases where " a decision is required between a master and his servant; in nonful- " filment of sale, and refusal to receive goods purchased; in gambling al- " so, whether with inanimate or living objects, when disputes are brought up, " proof by witnesses is declared requisite, not by ordeal nor by documents."

XXI.

And by possession.

3. In disputes respecting the making of door ways and roads, and " that about enjoyment of any thing, water courses, and the like, pos- " session is the strongest proof, not documents, [3] nor witnesses."

Ordeal, when lawful

4. Bruhusputi declares ordeal to be in some cases the strongest: " Ma- " kers of false Jewels, pearls, or coins; they who steal deposited articles; " murderers, and those who commit adultery with other men's wives, " are always to be examined by [ordeal of] Oath; in charges of deadly " sin, if witnesses are present, and the Defendant [*Vadi*] accepts the " ordeal, the witnesses then shall not be examined." Vyasu: " If he say, " ' this writing was not made by me; it was forged by this man;' hav- " ing laid down that writing, a decision on the case shall be made by " ordeal." [4] " In the case of a capital offence committed in a desert, " in an uninhabited place, at night, or in the interior of a dwelling; " and in the case of a denial of a deposit, divine test must be resorted " to." Bruhusputi: "When doubts are produced in written or oral evi- " dence; and where the curcumstantial evidence is incomplete, ordeal is

1—See ante, section 1st, para. 10th; and post, chapter 2nd, sec. 3rd, para. 6th,: chap. 12th. para. 3rd.

2—See subsequent Chapters on these heads.

3—Ordeal, Mitakshura.

4—Narudu, in the Mitakshura. Macnaghten, p. 439.

"then to be made the means of clearing up the matter."

Matters of choice.

5 THE SAME author states a liberty of choice in some cases, between ordeal and witnesses: [1] "In the investigation of a capital offence, or "*affray by* deed or *words*, and in all cases of violence committed long "ago, both witnesses, and divine test may be had recourse to." "Writings "for debt or witnesses; as well as the *entry of any trifling circumstance*, "or the like, and ordeal, are mentioned as admissible, with a view to "the well being of the subjects." *Entry of any trifling circumstance*, one point of proof. *In an affray, by words*, meaning personal abuse, as 'you have murdered a *Brahmun*,' or the like.

Explanation XXII.

6. But what KATYAYUNU says that: "In wordy affrays, and in dis- "putes for *land*, they shall not take notice of Ordeal," relates to trifling cases of abuse; the word *land* is merely used to signify fixed proper- ty [in general], by putting a part for the whole. Even as PITAMUHU says: "In disputes for fixed property, they must cause ordeal to be "excluded;" therefore, if there be witnesses or other legal proof then ordeal is prohibited. Even so THE SAME author says: "They shall cause "the matter to be proved by these [three means], by witnesses, by do- "cumentary evidence, and by possession."

Total absence of evidence.

7. PITAMUHU: "Where Deeds are not to be procured, nor proof by "possession, nor witnesses; and there is no manifestation, [or descent, of "the judgment] of the Gods, then the proof lies in the opinion of the "king." Disputes, which maintain such a doubtful form, that they are not capable of being determined with certainty, the King shall decide, by his own opinion of them, for he is the lord of all. Thus the *Vyuvuharu Matreka* is finished.

1—Macnaghten, p. 439. q. v. 'Assault and battery' does not exactly define the Hindoo law term, which includes 'abuse, &c.' under this head. See chapter 16th, sections 1st and 2nd.

CHAPTER II.

OF THE DIFFERENT MODES OF PROOF.

SECTION I.

OF EVIDENCE BY WRITINGS [*LEKHYUM*].

1. On this subject BRUHUSPUTI says: "Writings are declared to be "of three kinds; those written by the king, *made at a particular place*, "and likewise written *by any person with his own hand;* but their fur-"ther subdivisions are very numerous." As for only two kinds being mentioned by VUSISHTHU: "Writings are understood to be of two natures, "those executed *among the people*, and those relating to the king's "affairs," it is occasioned by his considering as one, without distinguishing them, those *made at a particular place*, and those *under a person's own hand*. *Among the people*, is a parallel expression to that of, 'among mankind' [in general]. According to the Author of the SUNGRUHU, [1] written evidence is declared to be of two kinds, those deeds made by the king, [2] and those current *among mankind*.

Evidence by writings XXIII.

2. BRUHUSPUTI: "Writings *among mankind*, are of seven kinds; for "*partition*, *gift*, *purchase*, *pledge*, public *agreements*, *slaves*, *debts*, and *the* "*like;* the king's orders are of three kinds." [3] "That record of *parti*-"*tion* which brothers, [or other coheirs,] execute, after making a just division "by mutual consent, is called the written memorial of the distribution." "And when a man has given away land, the deed which he gets drawn

Enumeration of them

Viz. Deeds, of Partition.

Gift

1—The Smriti Sungruhu. 2—See post, para. 6, 8. 3—Colebrooke's Digest, 3rd, 408.

"out, 'for holding the land as long as the moon and sun shall last, un-"reserved, and incapable of being seized by any one,' that is known "as a writing of *gift*." "When any one, having bought a house, field, "or the like, causes a deed to be drawn up, containing an exact state-"ment of the price, that is called a writing of *purchase*." "When a man, "having given in pledge either moveable or fixed property, causes a "writing to be made out, stating in it the conditions, whether of pre-"servation or enjoyment [by the mortgagee], it is called a writing of "*pledge*." "If the people of a whole Village, or of a district, mutually "execute a writing, under their own signatures, among themselves, for "the sake of some ordinance not contrary to the king's [laws], that "is called a writing of *agreement*." "When a person, destitute of clothes "and food, makes a writing in a forest to this effect, 'I will do your "work,' that is called a writing of *slavery*." "When a person, taking up "money at interest, makes out a deed himself, and causes the same to "be done by the other party, it is termed a writing of *loan*, and by "the wise, a deed of *debt*." From the words, *the like*, we must understand, 'of purification, and *the like*.'

Purchase

Pledge

Agreement

XXIV. Slavery and Debt.

Likewise of Purification

3. KATYAYUNU declares what are these deeds of purification and the like: "When an accusation has been sustained, and penance for it "performed, by a man, the deed certifying his purity, is known as a "*deed of purification*, if attested by witnesses." "In all the higher "[classes], where an accusation is sustained, the writing which is pass-"ed when the dispute is finished, is known as a *deed of peace*." "When "a decision is given in boundary disputes, a *deed of boundaries* is drawn "out." PRUJAPUTI mentions a *deed of bail*: "When the bailee carries the "very thing bailed, again to another for pledge, he shall cause a *deed* "*of pledge* to be recorded in writing, and give with it the deed [he "received], in the first instance."

Peace

Boundaries

Bail and

4. YANYUWULKYU also: [1] "Having discharged the whole debt, he "should tear up the writing, or cause another to be executed for *ac-* "*quittance.*"

Acquittances.

5. NARUDU thus lays down the difference between the two kinds of writings before mentioned, those made with a person's own hand and by that of another: [2] "Documentary evidence is declared to be of two "sorts; [the first] in the handwriting of the party himself, which need "not have subscribing witnesses; and [the second,] in that of another "person, which ought to be attested: the validity of both depends on "the usage of the country." YANYUWULKYU: [3] "But every document "which is in the handwriting of the party himself, is considered as "sufficient evidence, even without witnesses, unless obtained by *force* "or *fraud.*" *Force,* duress. *Fraud,* desire [to cheat], or the like. THE SAME author states a distinction among those done by another: [4] "What-"ever contract has been agreed upon between parties by mutual consent, "a writing shall be made of it, attested by witnesses, headed with the "name of the obligor; and [5] the year, month, fortnight, day, name, tribe, "family, *scholastic title,* the names of the parties' fathers, &c. must be "specified." *Scholastic title,* as, 'one well qualified in a branch of the *Rug Vedu,*' or the like; taking his name from a particular qualification, as, a *Rug Vedee,* a student of the *Rug Vedu.* THE SAME author says: [6] "When the transaction is completed, the borrower should sign his "name with his own hand; adding, 'what is above written has the as-"sent of me, son of such a one;' and the witnesses, being *equal,* shall "also write, putting the names of their father first, 'I, such an one, am

Execution of Writings

XXV.

1—Macnaghten. page 459.

2—Digest, 1st. 21. Macnaghten, p. 443--454, q. v. Of the different readings here referred to, I have adopted that of the Digest, as more intelligible, [the other seeming to infer four kinds] and agreeable to our author.

3--Digest, 1st. 23. 4—Digest, 1st, 24. 5 and 6—Digest, 1st, 21--25. Macnaghten, 444--445.

" witness to this writing.' And the writer shall then write at the end, " [of the deed itself] 'this has been written by me, the son of such an " one, having been sought for the purpose by both parties.'" *Equal*, in number and qualifications. In some copies, for equal, they read *unequal*, by inserting the letter U [the negative sign]. NARUDU: [1] "That debtor " who is ignorant of the art of writing, shall cause to be written his " assent; or if the witness be so, by means of another witness, in pre- " sence of all the witnesses."

Royal deeds XXVI. Viz. of Gift.

6. YANYUWULKYU and BRUHUSPUTI illustrate the three kinds of royal Edicts, before alluded to: [2] "Let a king, having given land or assigned "*fixed property*, cause his gift to be written, for the information of " good princes who will succeed him, either on prepared silk, or on a " plate of copper, sealed above with his own signet. [3] "Having described " his ancestors and himself, and *stating* the quantity of the *gift*, with " the *measure* of the *acquisition*, and the *divisions*, and set his own hand " to it, and specified the time, let him render his donation firm." *Fixed property*, a corrody in mines or the like, given by the king or others, having the probable gains fixed. That which is received, is an *acquisition*, whether land or any other thing. *Its measure*, stating it to be so much. That which is given, is a *gift*, whether a house or any other thing. Its *divisions*, are the boundaries. *Stating*, reciting. Moreover: "If

Favor and Decrees.

" the king, pleased with the service or bravery of any one, bestow on " him a district or other [portion of land], by a written deed, that is " a writing of favor." "When the king, after going through the plaint, " answer, proofs, and decision, in a cause, issues a written [decree] to " the gaining party, that is called a writing of victory." [4]

1—Macnaghten, page 444. Digest, 1st, p. 26, where this text is ascribed to Vyasu.
2—Digest, 2nd, 162, q. v. 3—For examples of this, see Asiatic Researches, vol. 9th, page 108—406, &c.
4—A text similar to this will be found, attributed to Vusishthu, in Macnaghten, p. 457.

7. VYASU thus mentions the king's deputy: "A Secretary specially "appointed by the king himself, shall fully write down the King's grants "or orders, either for peace or war, on copper plates, or else on strong "cloth." And here THE SAME author mentions what is to be written by the king, as his own signature of acknowledgment: "He shall himself "write with his own hand, the *boundaries* and *measurement* [of the dis- "puted land, adding] 'done before me, the son of such an one, being "king of such a place.'" *Boundaries, and measurement;* their acceptation will be understood from the former texts.

Their execution.

XXVII.

8. But VUSISHTHU mentions four kinds of royal writings: "*Grants* "are to be considered as the first, and next *decrees*; these, with his *orders*, "and *respectful correspondence*, are the four kinds of royal writings." "That writing, whereby he communicates any business to the heads of "districts, to his servants, and to the guardian of the kingdom, is call- "ed a letter of *orders*." "That whereby he makes known any business "to his family priest, his domestic chaplain, or his spiritual teacher, all "persons to be respected and worshipped, is termed a letter of *respect- "ful* address." *Grants*, and *decrees*, are already mentioned.

Royal Orders,

and private Correspondence.

9. YANYUWULKYU: [1] "An instrument being in another country, or "badly written, or destroyed, or effaced, or stolen, or torn, or burned, "or divided, he shall cause another to be executed." NARUDU: [2] "In "the case of an instrument being deposited in another country, or destroy- "ed, or badly written, or stolen; should it be in existence, time must "be allowed; should it not be in existence, ocular *evidence* must be "resorted to." *Evidence*, witnesses; in their absence, ordeal; for it is said by KATYAYUNU: "In the absence of writings and witnesses, they "may exhibit [proof by] ordeal in judicial matters." YANYUWULKYU: [3]

Renewal and proof of Writings.

1—Macnaghten. page 457. Digest, 1st, 395. 2—Macnaghten, p. 457.

3—A text very similar to this is found in Macnaghten, p. 458, yet there are so many points of difference, that I cannot safely adopt it, in opposition to the commentary of the Muyookhu.

" The correctness or validity of a disputed or doubtful writing, may " be established by [comparing it with] something written [by the De- " fendant] with his own hand, or the like [test]; by its ***fitness***, the ***pos-*** " ***sibility of receipt***, the existing ***evidence***; ***marks***; established connection, " or ***circumstances***; ***title***, and such ***reasonable*** marks." ***Fitness***, the [debtor's] want of money. ***Possibility of receipt***, residence of both parties in one place. ***Marks***, impression of a seal, and the like. ***Evidence***, by witnesses, or other proof. ***Circumstances***, amounting to connexion, as, the possible means of receipt [of the matter in dispute]. ***Title***, some possible mode of acquisition. ***Reasons***, inferences. PRUJAPUTI: " A decision " is to be made with the greatest care, when royal orders of a king " are exhibited, by producing the impression of the seal set with the king's " own hand, and the hand-writing of his Secretary."

XXVIII.

Invalid Deeds.

10. BRUHUSPUTI states what are bad deeds: " A writing made by per- " sons dying, inimical, in fear, or in pain; by women; by intoxicated " or profligate persons; by those diseased; or, [obtained] at night, or by " fraud, or violence, does not stand good." " When only one witness, " [and he] accused of crime, or a vile person, has attested a deed, it " is called a false deed; and where the writer is a similar person, it is " considered the same."

SECTION II.

ON EVIDENCE BY POSSESSION [*BHOOKTI*]

Evidence by possession.

1. NARUDU: [1] " Possession, with a clear title [*Agumu*] affords evi-

1—Macnaghten, p. 430. For " title," see Strange's Elements, 1st, 31.

" dence; but possession constitutes no evidence, if unaccompanied by a " clear title." VYASU mentions [possession as] distinguished by various qualities, similar to that supported by title: [1] " Possession is fivefold; " titled, long, continuous, uninterrupted, and known to the adverse party." NARUDU declares the imperfection of [right in] the thing contested, when supported by enjoyment only: [2] " He who simply pleads posses- " sion, but no title, in consequence of proving such false possession, is " to be considered a thief."

When it constitutes Title, and how.

XXIX.

2. And this is to be taken within a period fit for recollection of legal title: But where it is not fit, even enjoyment alone is declared to be sufficiently valid, by THE SAME author: [3] " In cases falling " within the memory of man [*Smarthu kalu*] possession with a title is admit- " ted as evidence. In cases extending beyond the memory of man, the " hereditary succession of three ancestors, is admitted as evidence, even " *though the title be not produced.*" *Though the title be not produced;* the absence of title arising from the non-attainment of that fit period; because of the impossibility of determining it afterwards. In cases be- yond the age of man also, THE SAME author says, on the applying to recollection in the absence of title [4]: " He who enjoys without right, " even for many hundred years, the ruler of the earth should inflict on " that sinner the punishment of a thief."

3. But whereas he again says: " When possession has been held, " even by injustice, by three former men, including the father [of the " present occupant], that is not capable of being taken away from him, " when it has gone in order through three lives :" This means, ' If pro- perty enjoyed even without legal title, as well as after unjust acquisition, by three former persons including his father, is not capable of being

1—Macnaghten, p. 430.
2—Macnaghten, p. 430.
3—Macnaghten, p. 431. It is attributed in the Mitakshura to Katyayunu.
4—Macnaghten, p. 424-432.

taken away, how much less so, when it is impossible to fix the absence of legal title [in the present occupant].' Since also, there is a text of HAREETU: "When possession has been held without very good title, "but by three former men, that cannot be taken away when it has "gone in order through three lives," this must be considered as of possession without a good title proper for attainment of property, and not without the form of a title altogether.

Proof of it; of whom required.

4. What is further said in a text of YANYUWULKYU: [1] "He, by "whom a title has been obtained, must produce it when impugned, but "his son and grandson need not; for them, possession is of weight," only means, that the maker of the title alone is punishable in default of proving it, and not his sons or other heirs: but the fulfilment of their intent does not consequently [follow]. Even as HAREETU says: [2] "He, "by whom a title has been acquired, is subject to penalty in case of "not producing it; but not his son, or his grandson; though the pos- "session of these two also, is forfeited." YANYUWULKYU: [3] "When a "person dies during his defence of a cause, his *heirs* shall support *it*; "enjoyment held without legal title is there of no use." *Heirs*, those who take shares in his estate, whether sons or other persons. *It*, the title in dispute.

XXX.

Opponent's Argument

5. On the other hand: it may be said: that the assertion of possession during a long space of time being requisite as proof, is contrary to law; because the prosecutor's defeat also occurs, from enjoyment by another during a very short space of time; from what THE SAME author "says: [4] "Loss accrues to him, who for twenty years, observes his "land enjoyed by another without interfering; and in the case of mov- "able property, for ten years."

1—Macnaghten, p 432. 2—3—Macnaghten, p. 433. 4—Reports, vol. 2nd, 373.—Macnaghten, p. 424.

6. To this it is answered, that it only means there shall be a loss of the fruits, or profits produced from the land, or other thing litigated, for so long as the owner has observed [its occupation] by another, uncontested by him; but not loss of the land, or other thing itself also, because such interpretation would be contrary to the [former] text,[1] "He "who enjoys without right," &c.

Refuted.

7. KATYAYUNU:[2] "This law has been clearly settled, that no "weight of title attaches to the possession of him who has violently "carried off cattle, women, men, or other [animals]; neither by his son "after him." NARUDU: "A pledge, boundaries, a minor's estate; de- "posits, both specified and unknown; women; the property of the king, "and that of *Shrotriyus*, are not lost to the owners by another's posses- "sion of them." MUNOO[3]: "A milch Cow, a Camel, a riding horse; "[a bull, or other beast] which has been *sent to be tamed* for labour; "and other things used with friendly assent, are not lost, [by length of "time], to the owner." *Sent to be tamed*, what is given in charge to another for the sake of taming.

Possession invalid.

XXXI.

SECTION III.

ON EVIDENCE BY WITNESSES [*SAKSHI*].

1. In the Toduranundu, NARUDU says: "But in doubtful matters, when "two men are disputing, strict attention must be paid to their witnesses, "as to what was seen, heard, or understood."

Evidence by Witnesses.

1—Para. 2nd.

2—A somewhat similar text is found in Macnaghten, p. 424.

3—Chap. 8th v. 146.

Their nature.

2. BRUHUSPUTI states the distinctions of them: "Witnesses are "declared to be of twelve sorts, *written, caused to be written, concealed,* "or *recollected* [1]; a member of the family, a messenger; *a spontaneous* "*witness* [2] and *one in answer*; another man employed in the business; "the king; his *superintendant* [*Udhyukshu*]; and likewise the village." *Written*, entered by the Plaintiff in a deed. *Caused to be written*, one entered [in the same] by the Defendant at the Plaintiff's request. *Concealed*, one made to hear behind a partition, or the like. *Recollected*, reminded from time to time of the business [to be proved]. *Spontaneous*, a witness coming to give evidence of his own accord. *One in answer*, speaking after other witnesses, upon hearing or being, told [their evidence]. *Superintendant*, the chief judge: and this is meant to include the assessors and other [members of the Court], by reason of this text of KATYAYUNU: "The Secretary, chief judge, and assessors in succession, "[are witnesses when the king presides in a cause]" [3]

XXXII.

And number.

3. THE SAME author [4] says: "There shall be nine, seven, or five, "[witnesses]; even four or three; or two may be taken, if they are "both *Shrotriyus*; a single witness shall not be examined at any time." "*Written* witnesses shall be two, as well as *concealed* ones; three, four "or five, shall be the number of those *caused to be written, spontaneous, re*-"*minded*, men of the family, and likewise, those called *in answer*; a mes-"senger, and accountant, and likewise one employed in the business, may "give evidence as a single witness, and the king, as well as the su-"perintendant [and other officers of the Court]"

One witness when legal.

4. YANYUWULKYU declares the admissibility, even of the *written* witness

1--Bentham's Treatise on evidence, page 26—57.

2—Ditto, ditto page 80.—The term in Sanscrit signifies 'self willed.'

3—The last hemistich is omitted in the text, and supplied here from Macnaghten, page 412.

4—Probably Bruhusputi, elucidating his own preceding text.

and the rest, as a single witness, with mutual consent of both parties: [1] "By the consent of both parties, even one person, of virtuous know- "ledge, may be a witness." VYASU: "A witness, whose actions are "pure, and who knows his duty [towards men], whose word is known, "is admissible, even if the only witness, when it is necessary, in crimi- "nal cases." *Whose word is known*, often seen to be a speaker of truth. A single witness, if unconnected with the party, may be taken in cases of deposit and the like; for KATYAYUNU says: "In a very secret de- "posit, even one single witness is declared admissible; as well as one "witness, sent by the Plaintiff in a case of things *borrowed* for use." *Borrowed*, ornaments or other Jewellery, as ear ornaments or the like, obtained for the sake of a wedding, or the like. THE SAME author says one witness is also admissible in disputes about saleable articles: "They "shall cause the article to be identified by the very man who finished "it; that single witness is in such a dispute declared good evidence."

Requisite qualifications XXXIII.

5. VYASU details their qualifications: "Persons religiously brought "up, fathers of sons, purely descended, of a good family, veracious "speakers; constantly performing their duties towards Gods and men, "who have forsaken hate and envy; *Shrotriyus*, and those independant; "Learned Men; persons stationary; and young men, may all be "received as witnesses in cases of debt or the like, by the wise."

6. NARUDU: "Among companies of artizans, men who are artizans "shall be witnesses; and *men of one tribe* among those of the same; fo- "reigners [outcasts] among those living outside, and women among women." KATYAYUNU tells us who are *men of one tribe* [*Vurgu*]: "BHRUGOO calls "them men of one tribe, who are wearers of [false] tokens [2], members of

1—Macnaghten, page 447–449.

2—Lingee. The context would induce us to apply it to the Lingayut Vanees of the Dukhun, who do actually wear a Lingu upon their arms as a distinctive mark.

"Joint companies and of separate trades [1]; and other merchants; also "communities [*Sumoohusthu*] and other such men. The *Nayukus* of the "several communities, whether of slaves, bards, wrestlers, or the drivers "of elephants, horses, and carriages, are termed in law, *Vurgi*." YANYUWULKYU makes this mention of those of another Cast: [2] "There "should [in general] be three witnesses; persons who take delight in "acts ordained in the *Vedu* and in sacred law books; and properly, "they should be of the same sex, and class, with the party for whom "they give evidence: but, if that cannot be, those of all classes may "be examined."

Inadmissible witnesses.

7. THE SAME author tells us who are excluded: [3] "A woman, a "minor, an old man, a gamester, an intoxicated person, a madman, an "infamous person, a juggler, an infidel, a forger, one deformed, one de- "graded from Caste, a friend, one interested in the subject matter, a "partner. an enemy, a robber, a public offender, one convicted, *an out-* "*cast, and others*, are incompetent witnesses." *An outcast*, turned out by his own family. From the phrase, *and others*, slaves and the like must be undertood. BRUHUSPUTI: "The evidence of a mother's father, and "of a father's Brother; of a wife's Brother, and her maternal Uncle; of "a Brother and his son; a friend, and a daughter's husband, is in- "admissible in all disputes." NARUDU: [4] "He, who not having been "pointed out, comes and offers his evidence, is technically called a self- "spoken man; he is not proper to be examined in evidence." KATYAYUNU [5] "Of witnesses recorded, and summoned by a litigant party, "should one utter a contradiction, all will be rendered incompetent by "that contradiction."

XXXIV.

1—Sreni and Poogah, for which see chap. 1st sec. 1st para. 10; sec. 2d para. 1st—and chap. 12th para. 3.

2—Macnaghten p. 442 Dig. 1st 22.

3—Macnaghten, p. 446 Reports 1st 105-6-7.

4—Macnaghten, p. 446.

5—Macnaghten, p. 445.

Exceptions.

8. Of these also, NARUDU declares in some cases the admissibility: "Slaves, degraded persons, and the rest, who are declared not to be "[legal] witnesses, may also be admitted to give evidence, with due "consideration of the weight of the matter in dispute." In the absence, says MUNOO: [1] "On failure [of witnesses duly qualified,] evidence may "[in such cases] be given by a woman, by a child, or by an aged man; "by a pupil, by a kinsman, by a slave, or by a hired servant." YANYUWULKYU: [2] "All persons may be witnesses, in cases of *adultery*, "theft, affray, and criminal business." Here, the separate mention of *adultery*, and the rest, in treating of actions of a criminal nature, has reference to the act of adultery or other [offence] in a secret way. OOSHUNA: "A slave, a blind man, one deaf, a woman, a minor, an "old man, and the like, these persons also, if *unconnected* with the par- "ty, are admitted as witnesses, in criminal cases." *Unconnected*, not partial to either side.

Objections to receipt of evidence XXXV. and proceedings thereon.

9. BRUHUSPUTI: "Witnesses acquainted with the matter, if there be any "objections to them, they shall declare faulty; if *the opponent* charge as "faulty [witnesses] who have no fault, he is worthy of a fine *equal to it*." The *opponent* [*vadee*] here means the defendant. *Equal to it*, an amount equal to what forms the ground of suit. VYASU: "Objections to witnesses "are to be recited in Court by the Defendant; and they shall cause to be "read out [to the witnesses] all the objections, when taken down in writing, "and they shall give a reply to them." The meaning is, 'having clearly set before the witnesses the disqualifications alleged, as taken down in writing [from the Defendant], they shall be made by the Court to state their explanations on the subject.' THE SAME author says: "But on their "admission [of the disqualifications], their evidence is never at any time

1—Chap. 8th v. 70. Reports 1st 105. 2—Macnaghten, p. 447.

"fit to be received. But [if the case is] *otherwise*, the objections must "be *substantiated, with evidence*, by the Defendant." [1] "A person failing "to establish an exception openly made against witnesses, should be "punished; but if proved, the witnesses are to be dismissed, and depriv- "ed of the privilege of giving evidence." "Moreover, they shall undergo "humiliation in the mode consonant to the *Shastru*: provided the Plain- "tiff's sole reliance has been placed on the veracity of the witnesses." ***If otherwise***, in case of their not confessing. ***Substantiated***, made to acknowledge it. ***With evidence***, by proof. The meaning is, that the charge shall be substantiated as clearly as possible.

Further explanations.

10. However, this text: "Objections to witnesses, apparent to the "members of the Court, or those universally admitted by the world to "be true, are to be taken for granted, and not to be considered as re- "quiring proof with a view to obviate that particular disqualification," has reference to witnesses publicly known to be in the confidence of the party. [2] In case of these disqualifications being unknown to the Defendant, THE SAME author says: "Those objections in proof [which are known] are "to be declared by the defendant; but concealed faults are to be made mani- "fest by assessors in the time [of trial], by pointing them out from the ***Shastru***."

XXXVI.

Time for stating them.

11. This is the meaning, 'That concealed [objections] are to be declared, by quoting the ***Shastru*** upon them, at [any] time before the witnesses speak.' But they are not to be mentioned afterwards, for thus says BRUHUSPUTI: "For any legal objections to written deeds, as well as "to witnesses, which may exist, are to be declared in the time of trial; "if *mentioned* afterwards, it shall not vitiate them as proof." ***Mentioned***, proper to be spoken; that is, 'proper to be stated in the commencement,

1—Macnaghten, p. 448.

2—Bentham on evidence, page 46—applies here, in as far as the Members of the Court are not bound to shut their eyes to their own knowledge.

according to the rule of grammar, " The affix [*kluh*] implies an act " begun and not past [1] and likewise an agent." Here this affix denotes the agent. Here, their punishment is stated by KATYAYUNU: " He " who, when the matter has been spoken, shall charge, as disqualified, wit- " nesses before unsullied, and shall not state any cause for it, shall receive " the lowest amercement." In case of the inability of the witnesses to explain away the objections urged against them, the Plaintiff must do it; thus says BRUHUSPUTI: " The action of him whose documents or witnesses in a " cause are alleged to be faulty, shall not be favorably adjudged, so long " as he fails to clear *them* from the charge." *Them*, the documents, &c.

Subornation of Perjury.

12. KATYAYUNU declares the punishment for suborning false witnesses: " He, by whom false witnesses have been set up, through wicked desire of " gaining any object, shall have the whole of his property confiscated, and " then have his *object made null*." ***Object made null***, go without the object of his suit.

False witnesses.

XXXVII.

13. NARUDU declares the means of discovering false witnesses: " He " who, by reason of his wicked state, caused by his own crimes, appears as " if irresolute, goes from place to place, or runs after every person; who " suddenly coughs much, and likewise every now and then draws his " breath; who scratches, as if writing, with his feet; and who shakes his " hand and clothes; whose face changes color, and whose forehead sweats; " whose lips become dry, who looks above and about him, and who " speaks much, in a hurried manner, without restraint, unquestioned, such an " one is to be known for a false witness; they shall punish one so sinning " severely."

Examination of Witnesses.

14. KATYAYUNU and MUNOO [2] state the mode of examining witnesses: " In the forenoon, let the Judge, being purified, severally call on the twice

1—(Cole. Mit. 306 note.)

2—Chap. 8th v. 87. Macnaghten, p. 447.

" born, being purified also, to declare the truth in the presence of [some " image, a symbol of] the divinity, and of *Brahmuns*, while the witnesses " turn their faces either to the North or to the East." MUNOO: [1] " The " witnesses being assembled in the middle of the Court-room, in the pre- " sence of the Plaintiff and the Defendant, let the Judge examine them, " after having addressed them [all together,] in the following manner: 'What " ye know to have been transacted in the matter before us, between the " parties reciprocally, declare at large, and with truth; for your evidence " in this cause is required.' "

Production of the disputed article.

15. In disputes about kine, horses, and the like, THE SAME author requires the production of the thing in dispute: " In the presence of the " Plaintiff and Defendant, and in company with the thing to be proved, " they shall cause them to state their evidence openly; not at any time " without having it before their eyes. Evidence may be given upon the " disputed article alone, *without either* attending, *in some cases*; this is " the law in causes respecting quadrupeds, and likewise in those for bi- " peds, and fixed property." " In disputes about *articles of weight*, *number*, " or *measure*, [2] they may also in its *absence*, cause the witnesses to " state their evidence. In all *matters capable of proof*, evidence is requi-

XXXVIII.

" site, but not otherwise." *Without either, in some cases*; that is, without both the Plaintiff and Defendant, in presence of the disputed article. *In some cases*, meaning, in cases of quadrupeds and the rest. *Articles of weight*, gold, or the like, proper to be weighed. *Of number*, coin or the

1—Chap. 8th v. 79-80. Macnaghten 447. Strange, 1st 310.

2—The Gloss enumerating only articles of quantity, it might be doubtful, did common sense allow such a supposition, whether articles measured by length were not excluded, but the latitude always claimed for that frequently occurring phrase, 'the like,' would include measures of length as well as quantity. Adi, et cætera, the like, the rest. The same is not unknown to the English Law. Burn's Justice, Preface to 1st edition. " Also, upon another account, he hath sometimes made use of more words than otherwise " he would have done, namely, to avoid the frequent repetition of the term, *&c.* which is a *vague expression* " and apt to create uneasiness in the reader's mind, for that he cannot be satisfied from thence how much " or how little is intended to be understood."

like, fit to be counted. *Of measure*, things proper to be measured, as rice, wheat, and the like. *In absence*, in default of the production of the thing to be proved. *In matters capable of proof*, in disputes at law.

Further rules for examination of witnesses.

16. In cases involving murder, THE SAME author says, the depositions of witnesses are to be taken in presence of SIVU: "In charges of killing living "creatures, they shall deliver their evidence in presence of SIVU; in de-"fault of the marks, they shall cause them to deliver *it*; not *otherwise*." *It*, the deposition of the witnesses, to be given in default of marks of the murder. *Otherwise*, in existence of marks of the murder. THE SAME author says: "Procrastination must not be used by the king in the examination of wit-"nesses; it becomes a great fault, by reason of the time [lost], and bears "the quality of denial of justice." NARUDU: "Having called the wit-"nesses, and bound them down firmly by an oath, he shall examine them "separately, all of them well versed in the established rules of life, "and acquainted with the matter in dispute." VUSISHTHU: "That act, "which was seen by all of them together, is to be told by them even in the "same manner [together]; but that which was [seen] by them separate, "shall be related separately by each. But where the acts known by the "witnesses, were done at different times, each shall then be made to depose "[separately]; this rule is declared."

XXXIX.

Tendering of Oaths.

17. MUNOO:[1] "Let the Judge cause a *Brahmun* to swear by his veracity; "a *Kshutriyu*, by his horse, or elephant, and his weapons; a *Vaishyu*, by his "kine, grain and gold; a mechanic, or servile man, [*Shoodru*] by [imprecating "on his own head, if he speaks falsely,] all possible crimes." "*Brahmuns* who "tend herds of Cattle, who trade, who practise mechanical arts, who pro-"fess dancing and singing, who are hired servants, or usurers, let the Judge

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1—Chap. 8th v. 113, 102. see post. Chap. 3. para 3.

" exhort and examine as if they were *Shoodrus*." " They who are fallen from " their proper sphere of life; they who live by the bodies of others; they " who long for the privileges of twice born men, are to be examined as if " they were *Shoodrus*." The meaning is, that he should exhort them thus: ' By speaking contrary [to truth], your honorable character will be lost,' or the like.

Test of evidence.

18. The test for depositions of witnesses is declared: " The king shall " declare the matter in dispute clearly proved, if the evidence be nothing " wanting, as to the place, [or country], the time, age, thing in dispute itself, " the name, cast, [family or kind,] its weight [or measure]." YANYUWULKYU states this [rule for] decision on the counter statements of witnesses: [1] " If the evidence be discordant, the testimony of the greater " number shall prevail; if the witnesses be equal in number, the testimony " of the virtuous; if virtuous men depose two inconsistent facts, the testi- " mony of those who are most eminent by their honesty."

Punishment for refusing to give evidence.

19. THE SAME author declares the punishment for not deposing after having agreed to give evidence: " If a man does not give his evidence, he " shall be made by the king to pay *the whole* debt, with *a tenth* imposed " besides, before the lapse of forty-six days." *The whole,* including interest. *A tenth,* together with a tenth share. This tenth share is to be taken [from the witness] by the king; and the debt, with its interest, is to be taken [from the same] by the creditor. This is on the authority of the MITAKSHURA.

XL. The punishment for refusal to give evidence, by a witness knowing [any thing of the matter] is thus stated by THE SAME author: [2] " He who, having been " called on for his testimony, being influenced by his passions, conceals it " from others, should *be made to pay* eight fold, and *if a Brahmun,* should " suffer expulsion." *Be made to pay, eight times* as much as the fine laid

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1—Cole Digest, 1st, 231, note. Macnaghten, p. 449.

2—Macnaghten, p. 452.

down for a defeat; if he be a *Brahmun*, and unable to pay this fine, he is to be banished. *Kshutriyus* and the other [lower casts] are to be made to work at their own proper profession, according to the MITAKSHURA.

Further test.

20. MUNOO:[1] "The witness who has given evidence, and to whom "within seven days after, [a misfortune] happens, [from] disease, fire, or the "death of a kinsman, shall be condemned to pay the debt, and a fine." YANYUWULKYU: "Even when evidence has been delivered by witnesses, "if other more excellent witnesses, or double the number of the first, "depose contrary to them, the first witnesses shall be declared false."

Limit to receipt of evidence.

21. NARUDU: "But after the cause has been decided, all proof, whether "by documents or witnesses, shall be useless, provided it were not made "known before."

Perjury when lawful.

22. YANYUWULKYU declares a command for witnesses giving untrue statements in some cases, and the penance for so doing:[2] "Where men of the "four great classes would be liable to suffer capital punishment, there in- "deed the witness may speak untruths: A *Saruswutu* oblation must be "presented by regenerate men; for the sake of purification from the offence." VISHNOO declares the penance for *Shoodrus*: "And a *Shoodru* shall give *one* "*day's* fodder for ten kine." *One day's*, that is, what will be fully sufficient for their food during one whole day. Thus far of Witnesses.

1—Chap. 8th, v. 108.

2—Macnaghten, p. 454 q. v.

CHAPTER III.

ON ORDEAL, [*DIVYUM.*]

1. It has been thought useless and unnecessary to translate the Chapter on Ordeals, of which a sufficiently copious account is given in Sir F. Macnaghten's work on Hindoo Law, page 460 et seq., to which, as well as to a very interesting paper in the first volume of the Asiatic Researches, page 389, on the same subject, the reader is referred. But as one mode of Ordeal is by oath, the section relating to it is here added, for the satisfaction of those who consider an oath necessary duly to appreciate testimony; though it will be observed, this oath of Ordeal evidently refers to the litigating parties, and not to witnesses.

Nine sorts of it.

2. Nine modes of Ordeal having been discussed in order, [as enumerated in the following text of Bruhusputi: [1] "Ordeal by the Scales, by Fire, and

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1—Ellis's Lectures, part the third. "Oaths and Ordeals; the several kinds of expurgatory ordeals [namely, "according to Yanyuwulkyu and others, Ugni divyum, by fire; Julu divyum, by water; Vishu divyum, "by poison; Koshu divyum, by holy water: and, according to Narudu and others, Tundoolu divyum, by "chewing dry rice; Tuptu mashu divyum, by taking gold from clarified butter while hot; Phaludivyum, "by the hot plough share; Dhurmuju divyum, by taking one of two images, representing justice and "injustice, from a covered pot;] occasions on which the Ordeals may be lawfully performed; the penalty "incurred by the party demanding the ordeal, in case his adversary succeeds in performing it; the sea-"sons of the year in which, and the persons, considered with respect to caste, age, sex, &c. by whom, "the several ordeals may be legally performed; nature of the ordeals to be performed in suits for pro-"perty, determined by the value of the thing in dispute; places where the ordeals can be legally per-"formed; the punishment to be inflicted for failure in an ordeal; ceremonies common to all Ordeals, as "Oopuvasunum, fasting, &c.; particulars to be observed in the performance of the several Ordeals; and "first, in the ordeal of the balance: materials of which the scales are to be made; mode in which this "ordeal is to be performed; the same with respect to the ordeal by fire, water, poison, holy water, rice, "gold, the plough-share, and images; different kinds of *imprecatory Oaths, and occasions on which they* "*are lawful.*"

" by Water, [are the three first]; that by Poison [the fourth], and by con-
" secrated Water, [*Koshu*] is the fifth; that by Rice is stated as the sixth,
" that by Burning Oil the seventh, that by Iron is named as the eighth, and
" that by Lot is recorded as the ninth,"] * * * * * *
* * * * * * * * * * we come to

Ordeal by Oath. LXXXI.

3. OATHS [*Shuputha*,] MUNOO: [1] " Let the Judge cause a *Brahmun* to
" swear by his veracity; a *Kshutriyu*, by his horse, or elephant, and his wea-
" pons; a *Vaishyu*, by his kine, grain, and gold; a mechanic, or servile man,
" [*Shoodru*] by [imprecating on his own head, if he speak falsely,] all possi-
" ble crimes." And BRUHUSPUTI says, " A man's honor, vehicles, weapons,
" kine, seed, and gold; [imprecation] by the feet of the Gods and of *Brah-*
" *muns*, and by the heads of his children or wife; all these oaths are de-
" clared at all times attainable in small disputes. In criminal accusations,
" ordeals are declared purificatory."

In what cases permitted.

The result how determined.

4. YANYUWULKYU: " He, upon whom no *frightful* calamity happens,
" whether by the act of God or the King, within the term of fourteen days,
" shall be held pure; there is no doubt." *Frightful*, great. One of small
moment, according to the MITAKSHURA, [does not affect him], because of
the non-inviolability of mortal bodies. KATYAYUNU also: " He to whom
" a *frightful calamity* does not happen, whether by the act of God or the
" King, within fourteen days, is to be known as one pure by his oath."
Calamity, accident. *Frightful*, causing great anguish. According to
VACHUSPUTI MISRU and SMARTHU BHUTTACHARYU, a small accident does
not affect him, because it is the lot of humanity. Again KATYAYUNU says:
" Now *in case of contradiction* [of the Oath] *by the Gods*, within twice seven
" days, the debtor shall be made, by every possible means, to pay the money

LXXXII.

1—Chap. 8th, v. 113, Ante. Chap. 2. Sec. 3, para. 17.

" sued for, and a fine as well." " When *to him alone*, and not to all, there
" happens disease, fire, or the death of a near relation, he shall be made to
" pay the debt, and a fine." " Fever, dysentery, boils, great pains in the
" deep seated bones, diseases of the eyes, or of the throat, or madness, and
" pains in the head, with loss of use of the hand, are the heaven-directed
" diseases of mankind." *In contradiction by the Gods*, death of a relation or the like, happening to him alone. By this, [is intended], the exclusion of epidemic diseases and the like. Here, by the phrase *to him alone*, distinguishing the beforementioned debtor, is meant the mark of disease or the other calamity accruing to the debtor alone, not to his sons or other [relatives]: and those, only great, not slight ones, as has been already mentioned. By this reasoning, it means only a mark appearing against the defendant himself, as some uncommon disease, or the like, according to VACHUSPUTI MISRU. For this very reason, the death of a near relation is specified, but not their diseases or the like.

CHAPTER IV.

ON INHERITANCE, [*DAYU VIBHAGU*].

SECTION I.

OF PROPERTY OR OWNERSHIP, [*SVUTVUM*].

1. Now we come to speak of such Ownership, as is necessary for deciding regarding heritable property. The distinctions as to its power and operation, are produced by purchase, acceptance, &c. The reason of this is, that the causes of purchases, &c. arise from worldly transactions alone, not from the *Shastru;* for proprietary rights are understood even by those not acquainted with that sacred code, in deducing it from which the subject is needlessly enlarged. BHUVUNATHU is of this opinion in his NUVU VIVEKU.

Generation of Property.

LXXXIII.

2. As for the text of GOUTUMU: [1] "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a *Brahmun* an additional mode; conquest for a *Kshutriyu;* gain for a *Vaishyu* or *Shoodru,*" it is by way of repetition in matters established in the world. For people admit inheritance [to be] in that, which becomes one's own by the *mere* loss of the Owner's property therein. The word *mere* is used to include purchase, seizure, [or acceptance] and the rest. Here even, in such like loss, the word inheritance, has force; by reason of its joint application [in the text]to purchase and the other means of ownership: And the same may be proved by the argument, that 'without admitting a cause [there can be no effect].'

Text of GOUTUMU explained.

3. According to DHARESHWURU ACHARYU: 'The ownership of sons and the rest, in the wealth of the father, is not generated previously during his life,

Argument, that ownership is ge-

1—Cole. Mit. 244-250. Reports, vol, 2d, 312. 574.

nerated by birth, not by partition.

but is produced by partition.' And the author of the SMRITI SUNGRUHU says the same. But it is not so; for, from the plain sense of this text: "Even "by birth, ownership in wealth is obtained," and other similar ones, it is evident, that, ownership in the father's wealth depending on the filial relation, it is generated even by the production of a son. And [the same results] from this text of YANYUWULKYU:[1] "For the ownership of father and son "is the same, in land which was acquired by the *grandfather*, or in a cor-"rody, or in chattels which belonged to him." And this does not mean, 'that the reason of the acquisition of ownership is found in the grandfather's death, and not in the production of a son,' for [if it did], such ownership would be wanting, in case no grandson were to be born to him up to the time of his death. In this way therefore, either the word *grandfather* is of no use [in the argument]; or it follows à fortiori [*prusukteh*] that there is no equal ownership in [property] acquired by the great-grandfather, and other [more remote ancestors]. And the argument of 'cause and effect' might here be repeated.

LXXXIV.

Text of DEVULU,

4. As for this text of DEVULU:[2] "When the father is deceased, let the "sons divide the father's wealth; for sons have not ownership, while the "father is alive and free from defect;" the first hemistich comprehends up to the time of partition, because it declares the [ascertainment or] instrument, or agents, of the [act or] ceremony; but the last hemistich refers to their dependance, as declaring the same person's praises; but it does not mean the absence of ownership. It is also made clear in this text of SHUNKHU: "From this it results, that while the father lives, sons shall not divide the "wealth: *even if there should be afterwards* an *increase by* [means of] *them*, "still the sons are unfit, by reason of their *dependance* upon the wealth and "religious offices of the father." Here, *dependance* is specified immediately, with a view more strongly to inculcate the foregoing prohibition.

and of SHUNKHU, explained.

1—Cole. Mit. 277-8.

2—Coleb. Jim. Va. page 9. Digest 2d, 522.

'*Even if by them subsequently*, [be made]' is the proper interpretation. *By them*, by the sons, subsequently to their birth. *Increase*, what is obtained by acceptance, or the like. The proposition is this: 'If in property accepted by sons or other [heirs], their dependance [is clear] from the [father's] undisputed ownership, how [can we doubt their dependance] in property acquired by the father.' And this dependance attaches to partition, supererogatory moral observances, industry, and the like. So also HAREETU:[1] "While "the father lives, sons are not independent in regard to the *receipt* and "*alienation* of wealth, to the partition of it, or to *censure*." By the words *receipt* and *alienation*, supererogation is pointed out. *Censure*, according to MUDUNU, means, reproving of the slaves and other [household servants].

LXXXV.

5. As for this text:[2] "The father is master of *all* gems, pearls, and "corals; but neither the father nor the grandfather, is so of the whole "immoveable estate," it also means the father's independance, only in the wearing and other [use] of ear-rings, rings, [&c.], but not as far as gift or other [alienation]: neither is it with a view to the cessation of the cause of his ownership on the production of a son. This very meaning is made manifest also by [the text] noticing [only] gems, and such things as are not injured by use. Even so, this Text:[3] "Though immovables and bipeds "have been acquired by the man himself, a gift or sale of them should not "be made without convening all the sons," is only a prohibition against their gift, sale, or the like, not against the use of them.

Anonymous Text, touching the power of the father and grandfather, explained.

6. Now the pre-existing undefined [joint] ownership of more than one brother or other [Coheir] is, by partition between each, defined and made

Ownership is pre-existing, and merely defined by partition.

1—Colebrooke's Jimootu Vahunu, 19.—Digest, 2d 527. q. v. In all the translations of this text, as well as in some of the original versions of it, there is nothing about "partition." The word has crept in from a modern copy of the Muyookhu procured at Bunares, and used in preparing it for the press. It will be observed that there is a variation in the readings of the last part in all the Books.

2—Cole. Mit. 254, where the word "survvusyu" is translated "*of all* [other moveable property];" but the present version is made conformable to the interpretation of our author. Reports 2nd 457.

3—In some works this text is assigned to Vyasu. Here and in the Mitukshura, page 257, it is anonymous.

apparent. On this point SOME ONE has said: "This [ownership] is produced "different, as a separate portion, by the destruction of the former ownership "contained in the common property." But, justly speaking, since prolixity arises in considering the production of another ownership on the destruction of the former; therefore [separate] ownership, existing even originally from community [of interests], is discovered by partition, by the result furnishing separate substances or things.

LXXXVI.

Resumption of the argument, of GOUTUMU's Text, as relates to *Brahmuns*,

7. To return to the Text [1]: *Acceptance is for a Brahmun an additional mode;* that is, according to some, 'What is obtained by acceptance, is the *Brahmun's* additional [mode of] increase.' With reference to inheritance, and the other [five modes common to all], this acceptance is, for a *Brahmun* alone, an additional mode. It results therefore, that *conquest* and the other [modes enumerated] are in like manner [additional] for *Kshutriyus* and the rest.

To *Kshutriyus*,

8. In conquest also, where the property of the conquered consists in houses, lands, money, or the like, there alone [ownership] is acquired by the conqueror; but in the *revenues* [2] of the conquered, the conqueror possesses the same, but no property in them. Even so in the sixth [Book of the MIMANSA]: "The whole earth must not be given away by the king of the world, "neither a [whole] district [*Mundulu*] by the ruler of that district." But the property in each village, house, or other [portion] of a whole country or a district of it, belongs solely to the owner of the soil [*Bhowmiku*] or other [proprietor]. The revenue only [may be taken] by the prince. Therefore, in gift, or other alienation of such lands as are here made mention of, a gift of the land is not brought about; we must only suppose a mere livelihood [given by the prince out of his revenues]. But in purchases from the owner of the soil, even ownership accrues in the [property transferred], whether houses, land, or other. Then indeed, the benefits of a Gift of land

The king has no right to the soil, but merely to the revenue arising from it

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1—Of GOUTUMU, para. 2.

2—The terms, 'kuru grubita,' 'kuru grubn,' are used in the same sense in the inscription in As. Res. 9th, 419, note q. v.

also may be obtained from it [by buying land from the owners and *then* giving it away in charity.]

9. Gain, [*Nirvvishtu*] is that which is acquired by Usury, agriculture, commerce, tending of animals; and [secondly] what is acquired by service. From the dictionaries, we find the synonymes of 'Gain' to be, '*Hire*,' and '*Enjoyment*.' *Hire* again, is defined to be Service. *Enjoyment*, is usury and the rest. Here, the first mentioned [are sources of gain] to the *Vaishyu* class: The second [service] to the *Shoodru* class.

To *Vaishyus* and *Shoodrus*.

LXXXVII.

10. Now, the reason of sale and other transfer of property, is to be deduced solely from worldly motives, [and not from Law; with which proposition we set out.] And in like manner, popular practice is established in the ownership of calves and other [produce] of a man's own cow, or the like: but it would not be so, if it depended on such means only as the Law furnishes [for deciding such a question], because we do not learn from the law the means of distinguishing the produce of one's own cow or the like.

Conclusion drawn.

11. Yet, [an opponent may say]: 'There may be ownership in daughters, sons, or other issue of a wife, in the same way as there is in the produce of one's own cow; [and], a case of necessity being assumed, [for instance,] by the rule: "In a *Visvujitu* sacrifice a man gives the whole of "his possessions," the gift of every thing being granted, the necessity thence 'arises for the gift of a daughter or son, and therefore your reasoning from 'the sixth Book of the MIMANSA, [that they are not to be given], will be 'at variance with such Rule.'

Opponent's argument,

12. [I answer] No; because, there being no such property in a wife as there is in a cow or the like, there cannot be any property in the children produced from her: And in a worldly sense, the reason of ownership is determined, solely in the production of that which contains the principles of ownership. Neither can it be said, that property may also exist in wives, from acceptance [in marriage]; for then, by reason of the absence of property possessed by *Kshutriyus* and the other [two classes in] their wives, from their

Refuted.

want of the [right of] acceptance, there is also a want of it [property] in their issue.

Argument drawn from affiliation of an adopted son

13. Therefore, since the Text: [1] "This law is propounded by me in "regard to sons equal by Class," restricts the taking of an adopted son solely to one equal in class; and since with respect to *Kshutriyus* and the rest, acceptance of an adopted son is even secondary; then also with respect to *Brahmuns*, it is not the principal mode; because it is contrary to reason to have two contrary, but following, explanations of performing one and the same Rite.

Power of Adoption not restricted to *Brahmuns*. LXXXVIII

14. Neither can it be said that a *Brahmun* alone is entitled to the Rite of accepting a son, and that a *Kshutriyu* is not entitled, since we know that the Right [of accepting a son] does pertain to them, from the following and other Texts of SHOUNUKU and others [2]: A daughter's son as well as "a sister's son, are affiliated by *Shoodrus*." Even so, in the marriage of a *Brahmun* with the daughter of a *Kshutriyu* or other [lower class], by the *Brahmyu* Rite, the secondary rank must be admitted, both for the gift and acceptance; otherwise they are principal. Thus two explanations [of the same Rite] are [here again] opposed. As regards *Kshutriyus*, the admissibility of all to *Brahmyu* nuptials and the rest is in no degree contrary [to Texts.] Even so MISHRU in the TUNTRU RUTNU has said: 'The gift of sons and the rest is inferior [or secondary].'

A verbal objection, over ruled.

15. Neither are we to suppose [absolute] property, merely because the laws of language [admit the expression], 'own wife, son, daughter; for in the same way as we say 'own father.' 'own mother,' and the like, the expression also arises in speaking of kindred. If so, the power of the word 'own,' might likewise affect the term kindred, for in Dictionaries we find: "In the word *kindred*, the pronoun own [is feminine]; in *soul* [it is mas-

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1—Cole' Mit. 320.

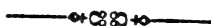
2—See Post, Sec. 5th, para. 9.

" culine]; in *kindred*, it is [common to] three [genders]; and in the expression " peculiar wealth, [1] it is neuter."

16. However, since in the sixth Book of the MIMANSA, gift of a slave born in the family is mentioned, this point must be considered. Since property in the mother is wanting, from absence of the complete power of gift, acceptance, purchase, sale, and the like, then in the household slave begotten on her, there is also an absence of the power, from the impropriety of it. This conclusion is conformable to the argument with which we set out.

Consistency preserved.

SECTION II.

OF HERITAGE, [*DAYU*].

1. Wealth, *not re-united*, nor put back again into a common stock, and [still] admitting of partition, is Heritage. By *not re-united*, I mean to exclude wealth [never before joint, and now first] united for purposes of gain or the like, because the term 'partition of heritage,' does not apply to dividing of [wealth] thrown together by merchants. In like manner we must also exclude re-united property, in the sense in which that term will hereafter be defined. [2]. Even as [we find] in the SMRITI SUNGRUHU: "That which is " received through the father, and that received through a mother, is des- " cribed by the term Heritage: The partition of it is now related." And in the NIGHUNTOO, it is said: " The learned define *heritage* to be, wealth

Definition of the Term.

LXXXIX.

1—In the Umuru Koshu, page 108, the expression is " Svostriyan dhune," signifying, " the pronoun is not fe- " minine, in the word wealth," instead of ' Svunnije dhune,' as here. Neither in the Trikandi, [page 76], nor in the Medini, [page 154], is the reading like the Muyookh; and in the Benares Copy, it is according to the Umnru Koshu.

2—Post. Section. 9th,

" of a *father*, which admits of partition." The word *father* is merely put to denote relations in general, as a part for the whole.

It is of two kinds,

2. This *heritage*, is of two kinds, Obstructed and unobstructed. When the life of the owner of the property, or that of his sons, or other [heirs], is interposed, that [property] is [termed] obstructed; for instance, the wealth of Uncles, and the like. But where ownership accrues to sons, or other [next heirs], solely from affinity to the owner, without reference to other means of acquiring property, [the heritage] is then unobstructed, as, the wealth of a father. This is the definition of heritage.

Obstructed

and unobstructed.

SECTION III.

OF THE PARTITION OF HERITAGE,—[*DAYU VIBHAGU.*]

Definition of the Term.

1. This NARUDU declares:[1] " Where a division of the *paternal* estate " is instituted by *sons*, that becomes a topic of litigation, called by the wise, " ' partition of heritage.' " The word *sons* includes [by *Synecdoche*] grandsons, and the rest. And in the same way, by *paternal* [is intended the estate of] the grandfather and the rest. But MUDUNU:[2] has the very words, ' of ' a father and the rest.' And this definition, of ' partition of heritage,' has been declared.

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It may take place without the existence of property.

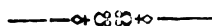
2. Even when there is a total failure of common property, a partition may also then be made, by the mere declaration, ' I am separate from thee.' A partition may even be a mere mental distinction. This exposition clearly distinguishes the various qualities of this [term].

1—Of the various readings of this text noticed by Mr. Colebrooke, in his notes to Mit. page 243, where it will be found, the Author adopts the following, 'pitryusyu,' 'prukulpyute,' 'tud vivadu pudum,' and 'yutru.'

2—The MUDUNU RUTNU; referred to for this reading, by Mr. Colebrooke, and formerly mentioned, page 1 note.

SECTION IV.

THE PERIODS OF PARTITION,—[*VIBHAGU KALU.*]

Partition of the paternal estate, may take place at three periods, viz. after the father's death.

1. MUNOO:[1] "After the death of the Father *and* Mother, the brothers, "being assembled, may divide among themselves the paternal [and maternal] "estate; but they have no power over it, while their parents live [unless the "father choose to distribute it]." By inserting the word *and*, the consummation of [both their] deaths is not required. Even thus, in the MUDUNU RUTNU and SMRITI SUNGRUHU: "A partition of the father's wealth may take "place, even whilst the mother lives, for this reason, that without her hus-"band, the mother does not from her independence also derive ownership. "A partition of the mother's wealth also may take place, in like manner "while the father is alive, for, if there be issue, the lord [of the wife] is not "lord of the wife's wealth."[2]

Or before it, if the mother be past child bearing.

2. This is opposed to a Text of BRUHUSPUTI:[3] "On the demise of both "parents, participation among brothers is allowed: and even while they are "both living it is right, if the mother be past child bearing." NARUDU:[4] "Let sons regularly divide the wealth, when the father is dead; or when the "mother is past child bearing, *and the Sisters are married;* or when the "father's *sensual passions* are *extinguished.*" *Sensual passions,* desire. *Extinguished,* averse. The expression, *and the Sisters are married,* must be taken collectively with [the mother's] child bearing, and extinction of [the father's] passions, after the simile of the Crow's eye[5].

Or, with the father's

3. GOUTUMU:[6] "After the demise of the father, let sons share his

1—Chapter 9th, v. 104. Cole. Mit 263. Jim. Va. page 8. Digest 2d, 521.

2—See Section 10th on "Woman's property."

3—Cole. Jim. Va. 23-56. Digest, 2d, 18-78.

4—Cole. Mit. 260.

5—That bird being fabled [from its singular mode of 'peering,'] to look two ways at once, Cole. Mit. 358 note.

6—Colebrooke, Mitakshura, 260. but I have here followed the translation given in Jimootu Vahunu, page 24, as more conformable to the doctrine of the Muyookhu, which allows only three periods of partition. The Mitakshura, on the other hand asserts four, and in support of this doctrine, divides this very Text of GOUTUMU, into three portions.

consent, at any time. XCI.

" estate. Or, while he lives, and the mother be past child bearing, *if he desire* " partition." From this expression, *if he desire*, partition is declared legal also, before the mother is past child bearing, by the father's wish alone.

Partition of ancestral property, may take place even against the father's consent.

4. BRUHUSPUTI declares partition in some cases without his wish: " The " father and sons are equal sharers in houses, and lands, derived regularly " from Ancestors: but sons are not worthy [in their own right,] of a share in " wealth acquired by the father himself, when the father is unwilling:" From which it results, that sons are worthy of a share in property, acquired by the grandfather or other [ancestor], even though the father do not wish it.

With exception of such as he had recovered by his own exertions.

5. In the grandfather's property also, partition in some cases depends on the father's pleasure, say MUNOO [1] and VISHNOO: " And if a father by his " own efforts, recover [a debt or property unjustly detained] which could " not be recovered before [by his father], he shall not, unless by his free " will, put it into parcenary with his sons, since in fact it was acquired by " himself." BRUHUSPUTI [2]: " Over the grandfather's property, which has " been seized [by strangers], and is recovered by the father through his own " ability, and over [any thing] gained by him through science, valour, or the " like, the father's full dominion is ordained. He may give it away at his " pleasure, or he may defray his consumption with such wealth; but on " failure of him, the sons are pronounced entitled to equal shares."

Over which, as well as over his own acquisitions, the father has full dominion.

Circumstances invalidating the father's power.

6. NARUDU [3]: " A father who is afflicted with disease, or influenced by " wrath, or whose mind is engrossed by a beloved object, or who acts other- " wise than the law permits, has no power in the distribution of the estate." HAREETU: [4] " If the father be *free from desire*, old, *perverted in mind*, or " long afflicted with disease, partition of his wealth [may be made]." *Free from desire*, according to the MUDUNU RUTNU, means, without desire of par-

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1—Chap. 9th, verse 209. Cole. Jim. Va. 28.—Mit. 279. Digest 3d 33, and the note there,

2—Cole. Jim. Va. 134, the reading of which, ' Bhogunchevu,' is here followed Digest, 3d 32.

3—Cole.. Jim. Va. 52.—Mit. 263. Digest 2d, 541.

4—This Text is found, but with a different reading, in Cole. Jim. Va. page 19, to which, with the note there, the reader is referred.

tition. *Perverted in mind*, following practices contrary to law. The sense is, ' that partition may be made, even against the will of [such a] father.'

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The eldest son, in that case, manages the estate and the distribution of it; or the next after him, with his consent.

7. HAREETU says, that when the father is incapable, partition takes place by the concurrence of the eldest son:[1] " But if he be decayed, remotely " absent, or afflicted with disease, let the eldest son manage the affairs as " he pleases."[2] SHUNKHU and LIKHITU:[3] " If the father be incapable, let " the eldest son manage the affairs of the family; or, with his consent, *the* " *next* brother conversant with business." *The next*, the one born after him. Partition by the pleasure of one capable of the maintenance and other [care] of the family [is intended]. From this it results, that if all be so [qualified], it is [immaterial or] undetermined.

On voluntary partition by the father, shares defined.

8. YANYUWULKYU:[4] " When the father makes a partition, let him sepa- " rate his sons [from himself] at his pleasure, and either [dismiss] the eldest " with the best share, or [if he choose], all may be equal sharers." A voluntary partition alone [is denoted] by the last hemistich; since the dependance of the will in the two cases mentioned, has been above declared, from the impropriety of independance; [and further] from the inconsistency [which would result in such construction] of the Text: [For then he might give] to one a Lak [of Rupees]; to another a single *Kowree;* to a third, nothing at all; which would be no [fair] exposition [of the law]. A distinction in the share of the eldest, is noticed by MUNOO:[5] " The portion deducted for the " eldest, is a twentieth part [of the heritage], with the best of all the chattels; " for the middlemost, half of that, [or a fortieth]; for the youngest, a quar- " ter of it, [or an eightieth]:" " But, if there be no deduction, the shares " must be distributed in this manner: Let the eldest have a double share,

Partition by deduction as defined by MUNOO.

1—Cole. Jim. Va. 19. Digest 2d, 527.

2—The first hemistich, of the stanza of which this is the sequel, occurred before at Sec. 1st, para. 4.

3—Cole. Jim. Va. 19. Digest 2d, 533.

4—Cole. Mit. 258. Jim. Va. 51. Digest 2d. 530.

5—Chap. 9th, vs. 112-116-117. Digest 2d, 548-52.

" and the next born, a share and a half, [if they clearly surpass the rest in " virtue and learning ;] the younger sons must have each a share: [if all be " equal in good qualities, they must all take share and share alike."]

XCIII.

Primogeniture in case of twins.

9. Between twins, the birth right of that one first born is thus declared by MUNOO [1]: " The right of invoking *Indru* by the texts, called *Suubrahmunya*, " depends on actual priority of birth; and of twins also, [if any such be " conceived] among [different] wives, the eldest is he, who was first actually " born." [2]: " Among twins, to him whose face [kinsmen] first see after his " birth, belong [the privileges of] male offspring, [the right of performing " obsequies] for his father, and [the honors of] primogeniture."

10. However, in the PINDU SIDDHI and other Medical Books, the right of primogeniture is awarded to the last born [of twins]. This is opposed by the above [texts] in the matter at issue, because it has no foundation in the Sacred writings; like as: " Purification ensues after a month [to *Shoodrus*."] However, the right of primogeniture of the last born is declared in the BHAGVUTU, [3] in this text and the like: " When a double fœtus is conceived, " the last conception is that first brought into the world." [But] this doctrine is also opposed to the above Texts [of MUNOO and DEVULU], whilst in the POORANUS, many practices are disclosed, contrary to the written Law. According to some, the question ought to be decided by the customs of the Country. But what I stated at first, [in favor of the first born], is the proper doctrine.

Partition by deduction, illegal in modern times.

11. And this partition by deduction, is not respected in the *Kuli*, [or present] age, for it is one of the things [expressly] set aside in the present age, as has been already proved by me in my SUMUYU MUYOOKHU.

1—Chap. 9th, v. 126. Digest 2d, 577.

2—This following Text is found in the Digest 2d, 578, attributed to DEVULU, and not MUNOO.

3—In the third *Skundu*, treating of the birth of Hirunyukusipoo, and Hirunyakshu, twins, Daityus, produced by Deetee, one of the wives of Kusyupu Rishi; the first hemistich of the Text is omitted by our Author, probably from its extreme grossness.

12. NARUDU allows the father a double share:[1] "Let the father, "making a partition, reserve two shares for himself." This text relates to an only son. For in the MUDUNU RUTNU is this of SHUNKHU and LIKHITU:[2] "If there be *one* son, let [the father] himself reserve two shares, and the "best of the slaves and cattle." The word *one* relates to the most excellent. By the author of the UMURU [KOSHU], 'chief,' 'other,' 'only,' are declared the synonymes of *one*. All which, according to the PARIJATU, denote a son well qualified.

The father, in partition with an only son, takes a double share.

XCIV.

13. BRUHUSPUTI however declares the right to only an equal share with his sons, even if there be only one, in property acquired by the grandfather[3]: "In wealth acquired by the grandfather, whether it consist of movables or "immovables, the equal participation of father and son is ordained." YANYUWULKYU[4]: "For the ownership of father and son is the same, in land "which was acquired by the grandfather, or in a corrody, or in chattels "[which belonged to him]." KATYAYUNU: "When the father and the "sons even, take all that, which has been made upon the common wealth, "in equal shares, it is called a legal partition."

The only son has even a right to half the ancestral property.

And no other division of ancestral property is legal.

14. As for this Text of YANYUWULKYU:[5] "A legal distribution, made "by the father, among sons separated with greater or less shares, is pro"nounced valid;" according to MUDUNU, VINYANESHWURU[6] and others, it means, 'If the [distribution] made by the father be legal, it cannot be set aside.' This Text again, of NARUDU:[7] "For such as have been separated "by the father with equal, greater, or less, allotments of wealth, that is a "lawful distribution: for the father is lord of all," relates to the former ages.

Two texts apparently to the contrary, explained away.

15. In a case of equal partition between a father and his sons, a share

In equal partition

1—Cole. Mit. 278. Jim. Va. 35-41. Digest 2d, 43.

2—Jim. Va. 44. Digest 2d, 555, where the same gloss is mentioned nearly in the words of our Author, though it is not found in the Mudunu Parijatu, which is probably the one alluded to here.

3—Jim. Va. 42. Digest 2d, 34.

4—Cole. Mit. 277-8. Jim. Va. 25. Digest 2d, 34. Ante Sec. 1st, para. 3.

5—6—Cole. Mit. 262. Jim. Va. 50. Digest 2d, 548.

7—Digest 2d, 547. Jim. Va. 50.

between a father and his sons, the mother gets a share.

belongs also to the wife; says YANYUWULKYU [1]: "If he make the allot-"ments equal, his wives, to whom no *separate property* had been given by "the husband or the father in law, must be rendered partakers of like por-"tions." If any had been given, they are only to get *half*, for he adds: [2] "Or "if any had been given, let him assign *the half*." *The half;* meaning, so much as, with what had been before given as *separate property*, [*Stree dhunum*] will make it equal to a son's share. But if her property be [already] more than such share, no share [belongs to her].

XCV.

To be made by additions to her private property previously received.

Resignation of a share permitted, under certain forms to prevent future claims.

16. THE SAME author treats of a want of wish to participate, in the case of a son able to earn, and not desiring a share [3]; "The separation of one "who is able to support himself, and is not desirous of participation, may "be completed by giving him some trifle." According to the MITAKSHURA it means that: 'Any thing whatever may be given, for the sake of preventing the desire being entertained by his sons, of receiving [a share of] the heritage.'

Partition after the father's death must be equal.

17. An equal partition, after the death of the father, is declared in another SMRITI [4]: "Let sons divide equally both the effects and the debts, after "[the demise of] both parents." HAREETU: [5] "When the father is dead, "the partition of the inheritance should be made equally."

In this case the mother takes an equal share with the sons.

18. YANYUWULKYU: [6] "Of heirs dividing after the death of the father, "let the mother also take an equal share." VISHNOO [7]: "Mothers receive "allotments according to the shares of sons." In another SMRITI [it is said]: "A mother, if she be dowerless, shall in a partition by sons, take "an equal share." The meaning is, that if she have dower [8], she shall

1—Cole. Mit. 261. Jim. Va. 63. Digest 3d, 11. Reports 1st, 31. 2—Cole. Mit. 261-475.

3—Cole. Mit. 262. Jim. Va. 62. Digest 3d, 65. Reports 2d, 8-665. The subsequent quotation, as of Viuyaneshwuru's comment on this Text, seems imperfect. Cole. on Obligations, page 25, but with regard to debts, see post. Chap. 5th, sec. 4th. 4—Yanyuwulkyu Mit. 263. Jim. Va. 55. Digest 3d, 78. Cole. on Oblig. page 138.

5—Jim. Va. page 61. where the word 'father' is omitted. 6—Cole. Mit. 285. Reports 2d, 454.

7—Jim. Va. 61. Digest 3d, 15. 8—DHUNU, wealth, taken as before in that sense, of separate property, para. 15.

take only as much as, with that dower, will make her an equal sharer with her sons. But no share [belongs to her], if her property be more than such share.

19. VYASU [1] declares the [right to] share, even of a step mother, and the paternal grandmother: " Even childless wives of the father are pro- " nounced equal sharers; and so are *all* the paternal grandmothers: they are " declared equal to mothers." From this [word] *all*, the step grandmothers also are to be included.

As do the step mothers, and paternal grand mothers

XCVI.

20. YANYUWULKYU declares the mode of partition among the sons of different brothers [2]: " Among grandsons by different fathers, the allot- " ment of shares is according to the fathers." It means, that if there be one son of one, two sons of a second, three of a third [or the like], their shares will be solely according to the number of the fathers, and not in the number of the sharers themselves.

Partition among sons of different brothers, is according to their fathers.

21. KATYAYUNU: [3] " Should a *younger son* die before partition, his " share shall be allotted [by the elder brother] to his son, provided he had " received no fortune from his grandfather." " That son's son shall receive " his father's share from his uncle, or from his [uncle's] son; and the same " [proportionate] share shall be allotted to all the brothers according to " law" " Or [if that grandson be also dead] his son takes the share; beyond " him succession *stops*." The *younger son* [*Unooju*] denotes also that the eldest [is bound to portion off his brother's son]. *Stops*, at the great grandson.

Brother's sons also share with their uncles.

Or even their sons' sons, but no farther.

22. We must thus understand it: ' The son of the great grandson, or ' the rest will not, on the death of the father [4], [*grandfather, and great ' grandfather, without interval after the death of the great great*] grandfather,

Explanation of the above restriction.

1—Jim. Va. 64. Digest 3d, 12. Reports 2d, 452. 2—Cole. Mit. 276. Jim. Va. 60, Digest 3d, 6.

3—Digest 3d, 7. Both the readings noted there are thrown out by the Author, who reads " Unooju," instead of " nije." 4—This is an apparent interpolation of the words following between the brackets, in Italics, as they are found only in the Benares Copy.

' obtain his wealth, being of another [line], so long as his son, or other [heirs] ' are alive. In default of son, grandson, [and *great grandson*] in the general ' [family] only, he also will take [the succession].'

Referring it to a reunited family only.

23. And this does not refer to an undivided family, but to a reunited one. For it is said by DEVULU [1]: " Partition of heritage among undivided parce- " ners, and a second partition among divided relatives living together [after " re-union], shall extend to the fourth in descent: this is a settled rule."

XCVII.

" And: [2] " Be it debt, or a written contract; or a house, or arable land, " descended from his grandfather, he shall take his due share of it, when he " comes, even though he had been very long in a foreign country." " If a " man leave the common family and reside in another province, his share " must undoubtedly be given to his male descendants when they appear." It means: ' between the great great grandfather, and his sons, separated when in a state of union, and [afterwards] re-united.'

Removal of the limitation in case of residence abroad.

24. This refers to those fixed in the same district; because, where they reside in different districts, it will descend even to the fifth, as is declared by BRUHUSPUTI, in treating of residence in other lands: [3] " Be he the third " person, or the fifth, or even the seventh, [that is in the second, or fourth, " or even in the sixth degree], he shall receive the share that gradually " descends to him, on full proof of his birth and family name."

Partition is according to the mothers, in case their sons are of equal number.

25. BRUHUSPUTI [4] declares a partition in some cases according to the mothers: " If there be many [sons] sprung from one [father], alike in num- " ber, and in class, but born of rival mothers, partition must be made by them " according to law, by the allotment of shares to the mothers." VYASU [5]: " If there be many sons of one man, by different mothers, but equal in num- " ber, and alike by class, a distribution among the mothers is approved."

1—Digest 3d, 10. 2—Digest 3d, 441, Jim. Va. 140. in both, the text is assigned to BRUHUSPUTI.
3—Digest 3d, 441. Jim. Va. 140 4—Jim. Va. 67. Digest 2d, 575. 5—Jim. Va. 57,

26. BRUHUSPUTI [1] gives this opposite example: "Among brothers, "who are equal in class, but vary in regard to the number [of sons pro-"duced by each mother], the shares of the heritage are allotted to the "males [not to their mothers]."

If not, then according to the number of the sons themselves.

27. YANYUWULKYU [2] states a partition among sons of different classes: "*The sons of a Brahmun*, in the several tribes, have four shares, or three, "or two, or one; the children *of a Kshutriyu* have three portions, or two, "or one; and *those of a Vaishyu* take two parts, or one." *The sons of a Brahmun*, that is, borne to him by a *Brahmunee*, a *Kshutriya*, a *Vaishya*, and a *Shoodra*. *Those of a Kshutriyu*, those by a *Kshutriya*, a *Vaishya*, and a *Shoodra*. *Those of a Vaishyu*, those borne to him by a *Vaishya* and a *Shoodra*.

Partition among sons of different classes.

XCVIII.

28. BRUHUSPUTI: [3] "Land, obtained by acceptance of donation, must "not be given to the son of a *Kshutriya*, or other wife of inferior tribe: even "though his father give it him, the son of the *Brahmunee* may resume it "when his father is dead." DEVULU: [4] "The son begotten on a *Shoodree* "woman by any man of a twice-born class, is not entitled to a share *of land*: "but one begotten on her, being of equal class, shall take all the property "[whether land or chattels]: thus is the law settled." *Of land*, acquired by purchase, and the other modes also. Yet he does obtain a share of the [moveable] wealth.

Land is confined to the son borne by the wife of equal class alone.

29. But the son by a *Shoodra* woman, not legally married, does not obtain a share, even of the moveable property. And so MUNOO: [5] "The son of "a *Brahmun*, a *Kshutriyu*, or a *Vaishyu*, by a woman of the servile class, "shall inherit no part of the estate [unless he be virtuous; nor jointly with "other sons, unless his mother was lawfully married:] whatever his father "may give him, let that be his own."

Illegitimate sons do not inherit even moveable wealth.

1—Digest 2d, 576. 2—Cole. Mit. 291. Digest 3d, 114. 3—Cole. Mit. 292. Jim. Va. 147, Digest 3d, 130
4—This is cited in other books as a Text of BRUHUSPUTI: Jim. Va. 148. Mit. 292. Digest 3d, 133
5—Chap. 9th, 155. Mit. 293. Jim. Va. 149, Digest 3d, 136.

But must be maintained.

30. BRUHUSPUTI declares this distinction after the father's death: [1] "The virtuous and obedient son, borne by a *Shoodru* woman to a man who has no "other offspring, should obtain a maintenance; and let kinsmen take the "residue of the estate." GOUTUMU [2]: "A son by a *Shoodra* woman, born "unto a man who leaves no [legitimate] offspring, shall, if he be strictly "obedient like a pupil, receive a *provision for his maintenance.*" *A provision, for his maintenance;* or, 'as a means of livelihood.'

Shares of sons begotten in inverse order.

31. THE SAME author [3]: "*Sons termed Prutilomu* [shall have an allot-"ment] similar to that of the son produced by a woman of the servile class." *Sons termed Prutilomu,* meaning, those produced by a woman, higher than the begetter, with respect to class.

Illegitimate sons of Shoodrus take a XCIX. share by the father's choice; and may claim half a share after his death.

32. YANYUWULKYU [4] states a distinction with regard to a son begotten by a *Shoodru* on a woman not married to him: "Even a son begotten *by* "*a Shoodru* on a female slave, may take a share, by the father's *choice.* But "if the father be dead, the brethren should make him partaker of the moiety "of a share." *Choice,* the pleasure of the father. From specifying *by a Shoodru,* it is clear, that a son begotten by a twice-born man on a female slave does not obtain a share, even by the father's choice: Neither after the death of the father, will he get the half; nor, in the absence of sons or other [heirs], will he gt the whole. This is the argument of the MUDUNU RUTNU, and others.

A son born after a partition by the father, alone succeeds to him.

33. A distinction is thus declared respecting a son born after partition: "One born [to a man] separated [from his sons] will alone take the fa-"ther's [wealth]." BRUHUSPUTI; [5] "All the wealth, which is acquired "by the father himself, who has made a partition with his sons, goes to "the son begotten by him after the partition: those, born before it, are de-"clared to have no right." [6]: "As in the wealth, so in the debts likewise;

1—Jim. Va. 149. Digest 3d, 139. 2—Digest 3d, 139. 3—Digest 3d, 140.
4—Cole. Mit. 322. Jim. Va. 151, Digest 3d, 143.
5—Cole. Mit. 281. Jim. Va. 137. 8. Digest 3d, 49. 435. 6—Jim. Va. 138.

" and in gifts, pledges, and purchases" "They have no claims on each other " except for acts of mourning and libations of water." If there be nothing but debts, then that [son] is not even bound to pay those debts, without receiving a share from those formerly separated; for, as will afterwards be shewn, [1] "He who takes the estate, must be made to pay the debts of it."

but is not bound to pay his debts under certain circumstances.

34. But if any one of them have re-united [with the father], a partition with that [son born after partition] shall be made. As is declared by MUNOO: [2] "A son born after a division, shall alone take the paternal wealth: " or he shall participate with such of the brethren as are reunited with the " father."

But reunion with the father gives a right to share with that son.

35. YANYUWULKYU [3] states a distinction, at a partition after the father's death, with respect to a son borne immediately afterwards, by a mother, or step-mother, or brother's wife, whose pregnancy was uncertain: " When the " sons have been separated, one who is [afterwards] born, of a woman equal " in class, shares the distribution." The partition is to be thus effected: Something is to be contributed by all the brothers, or others [who had previously shared], each something out of his own share, until the [posthumous son's] share is equal to their own. VISHNOO: [4] " Sons with whom the father " has made a partition, should give a share to the son born after the " distribution."

Distinction with regard to posthumous sons' shares.

36. And this we must understand as allowing for [subsequent] expenses and income. For if it be so, then, says THE SAME AUTHOR [5]: " His allotment " must absolutely be made, *out of the visible estate*, corrected for income and " expenditure." *Out of the visible estate*, out of the wealth actually forth coming.

Deduction to be first made for expenses and income.

37. At the time of a partition among brothers, this distinction is noted

Partition not to be

1—Post chap. 5th, Section 4th, para: 16.

2—Chapter 9th, v. 216. Cole. Mit. 281. Jim. Va. 136. Digest 3d, 50. The translation of the MITAKSHURA is followed.

3—Cole. Mit. 280, Jim. Va. 138. Digest 3d, 436.

4—Jim. Va. 138. Digest 3d, 51.

5—YANYUWULKYU [in continuation of his text partially quoted above]. Cole. Mit. 282. Jim. Va. 138. Digest 3d 436.

made till delivery of pregnant women.

by VUSISHTHU [1]: " Partition of heritage [takes place] among brothers, " [*having waited*] till after the delivery of such of the women as are childless " [but pregnant]." *Having waited*, is omitted [and supplied].

Initiation of younger brothers,

38. A further distinction in a partition after death of the father, is stated by BRUHUSPUTI: [2] " For younger *brothers*, whose investiture and other " ceremonies have not been performed, their elder brothers shall perform " them, out of the collected wealth of the father." The term *Yuveeyusuh*, [is substituted for *Yuveeyansuh*, with the freedom exercised by ancient sages] after the manner of the VEDUS, by omitting the regular inflection [*Noom*] and the prolongation of the vowel [*Deerghu*].

and of sisters, to be made by the eldest brother out of the common estate.

39. The mention of *brothers*, brings in the sisters also. Even so THE SAME author: " And those unmarried daughters who are as yet uninitiated, " must be initiated, by their eldest brother, even out of the father's wealth, " according to the [usual] rite."

40. YANYUWULKYU [3] [premising]: " Uninitiated brothers should be " initiated by those, for whom the ceremonies have been already completed:"

CI.

states a distinction in regard to initiation of sisters: " But sisters should be " disposed of in marriage, giving them as an allotment, the fourth part of a " brother's own share;" meaning, that a fourth part of such share as would be allotted to a son of such class as the sister [happens to be,] being given to each sister [according to her rank], they are to be initiated. [4]

Amount to be allowed for marriage of daughters.

Sons, principal and secondary,

41. For the sake of consistency in deciding upon taking the heritage YANYUWULKYU [5] gives this [detailed] description of sons principal and secondary: " 1st, The *legitimate son*, [*Ourusu*] is one procreated on the lawful wed- " ded wife: 2d, Equal to him is the *son of an appointed daughter:* [*pootrika*] 3d,

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1—Cole. Mit. 283, Jim. Va. 30. 2—Digest 3d, 101. Where the subsequent explanation is noticed.
3—Cole. Mit. 285-6 Jim Va. 66. Digest 3d, 96. Reports 1st, 419.
4—Or married, since marriage is the only one of the rites of initiation [*sunskaru*] to which a female is entitled. See note to page 239 of the Mit. 5—Cole. Mit. 301. Digest 3d, 160. et al.

" The *son of the wife*, [*kshetruju*] is one begotten on a wife by a kinsman of
" her husband, or by some other relative: 4th, One secretly produced in
" the house, is a son of hidden origin: 5th, A damsel's child, is one born
" of an unmarried woman: he is considered as son of his maternal grand
" sire: 6th, A child begotten on a woman whose [first] marriage had not
" been consummated, or on one who had been deflowered [before marriage]
" is called the *son of a twice-married woman*. 7th, He whom his father or
" his mother give for adoption, shall be considered as a *son given*: [*duttuku*]
" 8th, A son bought, is one who was sold by his father and mother. 9th,
" A son made, is one adopted by the man himself. 10th, One who gives
" himself, is self-given. 11th, A child, accepted while yet in the womb, is
" one received with a bride. 12th, He who is taken for adoption, having
" been forsaken by his parents, is a deserted son."

42. The *legitimate son*, born of a woman of equal class, and lawfully married, is the principal, [Of those secondary].

Of sons secondary, the author notices only the 2d.

43. The *son of an appointed daughter*, is of two kinds: Of which the first is thus explained by VUSISHTHU:[1] " This damsel, who has no brother, " I will give unto thee, decked with ornaments: the son, who may be born " of her, shall be my son." And the other [kind] is thus noticed by the same:[2] " The appointed daughter is considered to be the third [description of sons]." In this case, the father's obsequies and the like, are to be performed by the [appointed] daughter alone.

CII.

3d,

44. The *son of the wife*, is one begotten on the wife of a brother or other [relative dying] without male issue, under the orders of the eldest brother, by [his] younger brother, or other [relative as the case may be] being of the same lineage.

6th,

45. The *son of a twice-married woman*, is he who is produced of the

1—Cole. Mit. 303. Jim. Va. 133. Digest 3d, 171

2—Cole. Mit. 304.

second marriage of a woman, whether a virgin unenjoyed by her first husband, or whose first marriage had been consummated.

and 7th,

46. Here we must mark, that with the exception of the *given son*, [all the other ten] secondary sons are set aside in the *Kuli* or present age, for we read, in the prohibitions of it: "The acceptance likewise of affiliations, "other than those of a legitimate and *adopted* son." [1]

SECTION V.

ON ADOPTION,—[*DUTTUKU*].

Qualifications for an adoption.

1. MUNOO says [2]: "*He is called a son given* [*Duttrimu*], whom his "father *or* mother affectionately gives as a son, being *alike* [by class], and "*in* a time of *distress;* confirming the gift with water." According to MUDUNU: 'The disjunctive '*or*, means, that if the mother be not present, the father alone may give him away; and if the father be dead, the mother the same; but if both be alive, then even both.' From his using the word *in distress*, (it seems that) if *not* in distress, he must not be given.

The want of them affects the gift as well as the giver.

2. VINYANESHWURU [3] says, 'This prohibition regards the giver only (and not the gift); as affecting the person, and not the religious ceremony, [*krutvarthu*]' [4] But it is not so; for the certainty of the religious ceremony is ascertained from the invisible [or prospective] nature of this [rule regarding gift of a son] in the text. Or, if indeed a visible [existing] object [be allowed for obviating the exception, as to distress], still, by reason of the absolute necessity for the object of the rule being prospective in regard to the theme in hand, in going beyond it, the establishing of the invisible [prospective] benefit produced by the ceremony, and not before existing, [is brought about].

1—See "General note" to the translation of MUNOO: page 365. text, number 8.

2—Cole. Mit. 309.

3—Chapter 9th, 168. Mit. 309. Digest 3d, 258. Reports 1st, 193.

4—Cole. Mit. 249.

SOME however say, 'To the word distress, the sense of a prohibition does not apply, because of the want of that quality of the *Purisunkhya* rules, [which would shew] non existence of distress, by the absurdity they would involve, among other things, of quitting the straight forward sense of the text: and that we require only to suppose some sign or motive of distress; not that, when distress is the inciting motive, by not giving the son the crime of [not relieving] distress [will be incurred]; because the mere connexion of name and person in this Text is to be understood, and there is, in [declaring] the necessity of distress, a want of the actual completion of the gift.

CIII.

3. Moreover, the assertion made by him [VINYANESHWURU] in his chapter on marriage [1] that: 'In transgressing the prohibition against [espousing] 'sickly brides, and the like, it is merely an opposition to a manifest object, '[or rule], whilst the state of a lawful wife is superinduced notwithstanding,' is by the above argument over-ruled.

A disputed term examined, and defined.

4. *Alike*, according to MEDHATITHI, means, 'not by tribe, but by qualities suitable to the family: accordingly, a *Kshutriyu*, or a person of any 'other inferior class, may be the given son, [*Duttuku*] of a *Brahmunu*.'[2] But KOOLLOOKU BHUTTU says, it means 'equal in *class*,' and this is correct; for YANYUWULKYU, after enumerating the twelve sorts of sons, in this way: "The "legitimate son is one procreated on the lawful wedded wife:" &c., says: [3] "This law is propounded by me in regard to sons *equal by class*." And this I will make clear by two text of SHOUNUKU, to be cited hereafter [para. 9]. VINYANESHWURU also declares the same: [4] "By the eldest son, as soon as "born, a man *becomes the father of male issue;*" 'for the eldest chiefly fulfils 'the office of a son, and is therefore not to be given.' And this prohibition also regards the giver only, and not the taker, according to the same authority. [5]

1—*Acharadhyayu, vivahu prukurnu*, leaf 6 page 2d, 2—Cole. Mit. 309 note, where our Author is noticed—Dutt. Mim. 32. Dutt. Chund. 159. Reports 1st, 193. 3—Mit. 320. Jim. Va. 151. Digest 3d, 275
4—Mit. 310 quoting MUNOO chapter 9th, 106, the first hemistich here, and the last in the next paragraph.
5—It is not however very clear that such is the intent of the MITAKSHURA.

Prohibition proved to apply, both to the giver and receiver. CIV.

5. This prohibition might indeed apply to the giver alone, provided this text of MUNOO contained a prohibition of the gift of an eldest son. But it does not, for there is a want of proof [in the affirmative], and because the expression, *becomes the father of male issue*, is a declaration of parentage alone, and moreover that even, as regards its applicability to the discharge of debt alone. Accordingly, the last hemistich exactly agrees with this interpretation: " And is exonerated from debt to his ancestors; such a son therefore " is entitled to take *the whole*." [1] *The whole*, the wealth.

Analysis of the original Text of MUNOO, to prove.

6. And a male child alone becomes adopted, not a female. " *He* [*Suh*] " *is called a son given*." From the pronoun *he*, entered in the text, [being masculine, and] referring to connexion between name and person, we must under- ' stand one, ' where a mother and father are agents; where affection, water, and ' proper qualifications exist; with necessity as a reason; and where the act of ' gift, equality of class, and male sex [are united],' in the same way as, from the [masculine] pronoun *him*, in the holy text: " Let a *Brahmun* of eight years be " initiated, and let *him* [*tum*] be instructed," we infer, ' that the age is eight ' years; the order, that of a *Brahmun;* and the sex, male; his initiation ' with the string completed, '&c.

that a female may not be adopted.

7. From this results the refutation of what some persons have held, viz: ' That the terminations *ktre*, and *mum* being common to all genders; that the ' word *Duttrimu* ending in *mum*, therefore, since there is no distinction ' between it, and the act by which a gift is concluded, it may be applied ' in like manner even to a girl, when given, whether to her husband or ' to any other.'

CEREMONY, OF ADOPTION.

8. SHOUNUKU thus declares the mode of adopting a son: [2] " I, SHOUNUKU, " now declare the best adoption: One having no male issue, or one whose " male issue has died, having fasted for a son; having given two pieces of

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1—MUNOO chapter 9th. v 106, Jim. Va. 16-170. 2—Dutt. Mim. 67. Dutt. Chund. 167. Reports 2d, 35.
The *Mudhoopurku* is a prepared food, of honey, liquid butter, and curds.

" cloth, a pair of earrings, a turban, a ring for the forefinger, to a priest reli-
" giously disposed, a follower of VISHNOO, and thoroughly read in the VEDUS:
" having venerated the king and virtuous *Brahmunus*, by a *Mudhoopurku:*[1]
" Both a bunch of sixty four stems entirely of the *Koosu* grass, and fuel of the
" *pulashu* tree also: having collected these articles, having earnestly invited
" kinsmen and relations; having entertained the kinsmen with food; and
" especially *Brahmunus*: having performed the rites, commencing with that of
" placing the consecrated fire, and ending with that of purifying the liquid
" butter: having advanced before the giver, let him cause to be asked thus,
" 'give the boy.' The giver, being capable of the gift, [should give] to him
" with the recitation of the five prayers, the initial words of the first of which
" are, *Ye yujnyenu*, &c. Having taken him by both hands, with the reci-
" tation of the prayer, commencing, " *Devusyu twu*, &c;" having inaudibly
" repeated the mystical invocation, *Ungad unge*, &c. " having kissed the
" forehead of the child: having adorned with clothes, and so forth, the
" boy *bearing the reflection* of a son: Accompanied with dancing, songs, and
" benedictory words, having seated him in the middle of the house: hav-
" ing according to ordinance, offered a burnt offering of milk and curds, [to
" each incantation,] with recitation of the mystical invocation, '*Yustwa
" hridu:* the portion of the RIK VEDU commencing, '*toobhyum ugne:*' and
" the five prayers, of which the initial words of the first are *Somodudut*, &c."
" [let him close the ceremony[2].]

CV.

9. [3] " The adoption of a son, by any *Brahmun*, must be made from " amongst *supindus*, or kinsmen connected by an oblation of food; or on " failure of these, an *Usupindu*, or one not so connected, may be adopted:

What persons are capable of being adopted.

1—Dutt Mim. 88-89-91—Dutt Chund. 168-69. 2—This is added to render the passage intelligible. In the Dutt Mim. the sense breaks off here in a singular manner, being continued in other texts; our author leaves it equally incomplete. 3—Dutt Mim. 26, Dutt Chund 118. Reports 1st, 194.

" otherwise, let him not adopt." [1] " Of *Kshutriyus*, in their own class " positively : and [on default of a *Supindu* kinsman] even in the general fa- " mily, following the same primitive spiritual guide [*Gooroo*]: Of *Vaishyus* " from amongst those of the *Vaishyu* class [*Vaisyujateshoo*]; *of Shoodrus* " from amongst those of the *Shoodru* class. Of all, and the tribes likewise, " in [their own] classes only : and not otherwise. But *a daughters son, and* " *a sister's son* are affiliated by *Shoodrus*" [2] : " By no man, having an only " son [*eku pootru*] is the gift of a son to be ever made. By a man having

CVI.

" several sons [*buhoo pootru*] such gift is to be made, on account of difficulty " [*pruyutnutus*]." [3]: " Let the best of the regenerate [the *Brahmun*] to the " extent of his ability, bestow a gratuity on the officiating priest. A king " [*Kshutriyu*, the produce of] half even of his dominion: next in order, a " *Vaishyu* three hundred pieces; a *Shoodru*, the whole even of his property: " if indigent, to the extent of his means." *Bearing the reflection*, equal to. [or, like].

Argument upon the daughter's and sister's son for *Shoodrus*.

10. *A daughter's son and a sister's son:* Now, as in the instance of the stick, in the formula: " [The sacrificer, *yujman*] delivers *the stick* to [the *Brahmun*, " who personates] *Maitra Vuroonu*:" though the stick [really] be the object required, from the necessity of its previous existence, still, by the use of the fourth case [to], *Maitra Vuroonu* is alone denoted as the object, as is the most fit, from his act of uttering the summons in the formula: " The holder " of the stick [he who personates *Maitra Vuroonu*] then utters the " invocations [to the deities, for their presence in the sacrifice]." Even so, in this place, since the state of non release from debt [results from want of a son], and because the sixth case [*of Shoodrus*, in the text] has the sense of the fourth [to or for], therefore both the daughter's and the sister's son alone, are to be admitted *for Shoodrus*, as the means [of relieving the father from debt]. So, by the propriety of only these two, the purport of the

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1—Dutt Mim, 50. Dutt Chund, 160.

2—Dutt, Mim, 62 Dutt, Chund, 166, where it is translated, " is to be anxiously made."

3—Dutt, Mim, 92-3, Dutt, Chund, 170.

restriction of the rule is declared: thus, "The daughter's son and the "sister's son alone are for *Shoodrus*." But if the impossibility of it for *Shoodrus* [be urged], by reason of the inpropriety of the restriction, [I answer] they are both exhibited by the texts as the objects for *Shoodrus* alone; since it would be absurd to make the restriction apply to the agent, [*Purisunkhya*] in respect to *Brahmuns* and the rest.

Conclusion drawn that they are the most proper for Shoodrus.

11. Therefore the daughter's son, and sister's son even, are the most proper for *Shoodrus:* In default of them, another also [may be adopted], if of similar class, as declared by the same author [para. 9]: "Of *Shoodrus* from "amongst those of the *Shoodru class.*" This word, ***class***, is not [necessarily] implied, by its connexion with 'daughter's son and sister's son,' alone, for there is no [necessary] mutual connexion between the states, of 'daughter's son, sister's son, and common cast:' And there is a risk of our [thereby] making an absurdity of parallel passages of the same author. This is fully explained by my father in his DVAITU NIRNUYU, and the same is the rule [*Acharu*] ordained by sages.

CVII.

Assertion to the contrary, in the Shooddhi viveku, controverted.

12. And the assertion of their right [to adopt] being demonstrable in the very same way, as [the argument upon] the word *Nishadusthu puti* [1], the assertion in the SHOODDHI VIVEKU, that 'there is a want of title for *Shoodrus* 'to celebrate the acceptance of a son with a *Homu* authenticated by *Veduku* '*Muntrus*,' is hereby refuted.

Ceremony, for Shoodrus, to be by means of a Brahmun.

13. The *Homu* however, being accompanied with *Muntrus*, must be celebrated by them through the instrumentality of a *Brahmun*, in conformity to the text of PURASHURU: "When fasts, vows, burnt sacrifices, ablution at a "*Teerthu*, silent meditation, or prayer, and the like, are performed by a

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1—['The lord of those residing among the Nishadus,' who might be of any cast, and therefore entitled to adopt; but when read Nishadu sthuputi, 'the Lord of the Nishadus,' that is, one of that cast, he, as being lower than a Shoodru, could not adopt, in the proper form.]

" *Brahmunu* [on the part of another] the benefit of them accrues to him " who caused their performance." And the very same is declared, both by SMARTHU and HURINATHU.

Another text of Purashuru explained.

14. However, what [in seeming contradiction] PURASHURU himself adds: " The *Brahmunu* who, for the sake of *Dukshuna*, performs *Homu* with sa-" crificial materials furnished by a *Shoodru*, shall himself become a *Shoo-" dru*, and the *Shoodru* shall become a *Brahmun*," means, according to MUDUNU, that the whole benefit of the act accrues to the *Shoodru*, whilst the crime fully attaches to the *Brahmunu*.

One law, for women and Shoodrus.

15. The right also pertains to women, equally as to *Shoodrus*, by reason of the text: " Women and *Shoodrus*, are governed by the same law."

The proper objects for adoption pointed out

16. VUSISHTHU [1]: " Man, produced from virile seed and uterine blood, " proceeds from his father and his mother, as an effect from its cause. There-" fore his father and mother have power to give, to sell, or to abandon, " their son. But let no man give, or accept, an only son: for he is " [destined] to continue the line of his ancestors. Let not a woman give " or accept a son, unless with the assent of her husband." [2]: " A person, " *being about to adopt a son*, should take an *unremote kinsman*, or the near " relation of a kinsman, having convened his kindred, and announced his " intention to the king, and having offered a burnt offering, with recitation " of the prayers denominated '*Vyahriti*' in the middle of his dwelling.

CVIII.

" But, if a doubt arise, let him set apart, like a *Shoodru*, one whose kin-" dred are *remote;* for it is declared [in the *Vedus*]: 'Many are saved " by one.' When a son has been adopted, if a legitimate son be afterwards " born, the given son shares a fourth part."

Deduction

17. [3] Therefore, if there must be an order from the husband, it is for a

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1—Dutt. Mim. 93. Mit. 308-10-11-16 and notes. Digest 3d, 242. Reports 1st, 190.

2—Dutt. Chund. 162 takes up the text here. Reports 2d, 450.

3—Reports 1st, 197, 2d, 450, Nyati is sometimes interpreted " Cast," but improperly. It means Gentile kindred only. See Mit. 308, note, where our Author's opinion is noticed on this point.

married woman only, as above shewn; but, for a widow, even without it [adoption] may be made, with the permission of her father, or, on failure of him, of the relations [*Nyati*], under this precept: "Let a female be taken care "of, by her father while a child, by her husband when married, and by her "sons, in her old age. If none of these exist, let her other relations "[*Nyati*] take care of her. A woman is never fit for independence." This has been declared by YANYUWULKYU [1] only with reference to difference of age, and the circumstances of a woman, being under the power of her husband. In case of his being dead, or [unable] from old age, or other [disqualification], or from helplessness, then [she is] indeed under the power of her sons or other relatives.

in favor of Widows' power to adopt.

18. By KATYAYUNU also it has been said [2] "If a woman, without the "orders of her father, husband, or son, should perform *obsequies*, such ob- "sequies are of doubtful validity." What is here said of the orders of her father, husband, &c. relates only to the difference of age. *Obsequies* here means, rites performed for the other world; wherefore, at whatever age a married woman may [require to] receive the command of her husband, that very command is in the case of a widow not required, since the command of any other person, not here mentioned, is no where declared requisite. Therefore the right of adoption, even without the order of her [late] husband, does pertain to a widow.

A similar text of Katyayunu explained, only to relate to married women

CIX.

19. The *unremote kinsman*, means, in each case, the *supindu* nearest [to the adopter]; among whom again, the nearest of all is the brother's son; for: "If among several brothers of the whole blood, one of them have a son "born, MUNOO [3] pronounces them all fathers of a male child by means "of that son." And the MITAKSHURA [4] has the same. And this must be the proper motive of that precept; for it is impossible there can be any

Explanation of Vusishthu's text in favor of the brother's son first.

1—Digest 2d, 381. Reports 2d, 450. 2—Reports 1st, 196. 2nd 481.
3—4—Chapter 9th, 182. Mit. 320. Jim. Va. 200. Digest 3d, 266. Reports 2d, 86. Dutt. Mim. 33. Dutt. Chund. 161.

other. The *remote* kinsman, means 'one of another cast.' And my father " has said that: " A married man, who has even had a son born, may be- " come an adopted son." This also is reasonable, for it is not in opposition [to other maxims]. [1]

A text of the Kalika Pooranu, cited and explained.

20. As for this text of the KALIKA POORANU [2]: " O Lord of the earth, " a son, having been initiated under the family name of his father, *unto the* " *ceremony of tonsure inclusive,* does not become the son of another man " [*unyustus*]. The ceremony of tonsure and of investiture [3] being indeed " performed, under his own family name, sons given, and the rest may be " considered as issue: else they are termed slaves. After their fifth year, O " king, sons given, and the rest are not sons. [But] having taken a boy " five years old, the adopter should first perform the sacrifice for male issue." It relates to *Usugotrus* only. *Unto the ceremony of tonsure inclusive;* The particle, *ang*, here is inceptive, used for the sake of intirely including all such cases; for if it be meant as a limit conclusive, it will have the objection of being in opposition *to the ceremonies of tonsure and investiture* [specified in the text.] But such reliance is not to be placed on this last passage, because it is not to be found in two or three copies of the KALIKA POORANU.

CX.

'Son given,' of two kinds: 'SIMPLE ADOPTED,' and 'SON OF TWO FATHERS.'

21. The son given is of two sorts; first, simple; second, son of two fathers. *(dwyamooshyayunu) The first,* is one bestowed without any special compact; the last, is one given under an agreement to this effect, 'he shall belong to us both.' [4] Here *the first* will perform the funeral ceremony, and the other rites for the adopter only, as may thus [be demonstrated]: In the desire of accomplishing the acceptance of a son, by the term 'son' being in the second person, in the phrase, " being about to adopt a

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1—Reports 1st, 196. 2—Dutt. Mim. 68. Dutt. Chund. 175. Mit. 310 and Notes quoting our Author's opinion. Digest 3d, 148-9. Reports 1st, 195. 3—The reading of the Muyookh is purposely more explicit here than in the other works, which read 'tonsure and other rites.'

4—Mit. 308 note, quoting this passage.

son" [para. 16] and the like, detailing the rules for the ceremony, the production of a son is declared. And not that the adopter can possibly imagine, 'his filial relationship is derived from my capacity of begetting.' Therefore, from the word 'son,' after having instanced the whole duties of a son, we must admit the production of one, as far as requisite, and not previously existing. Hence, in the family of the accepter, the condition may [in this way] be brought about: From which result the acts suitable to the different relations, of son, father, and the rest. Even as is declared by MUNOO: [1] "A "*given son* must never claim the family and estate of his natural father: "the *funeral oblation follows the family and estate*, but of him who has given away his son, the *obsequies* fail."

Explanation of MUNOO's text.

22. *Follows the family and estate*, goes after the family and estate, the latter expression corresponding generally with the term "goes along with." The *given son*, the simple adopted; since, in the case of a *Dwyamooshyayunu*, the [double] obligation of family connexion and the like, will be hereafter declared. The *funeral oblation*, according to MEDHATITHI, KOOLLOOKU BHUTTU, and others, means the funeral ceremony, and other *Shraddhus*. According to other authors again, the *funeral oblation*, means *supindu* connexion; and *obsequies*, the funeral and other *shraddhus*. The correct interpretation is this: As by the passage: [2] "He, who has begotten a son, and "whose hair is [still] black, may maintain a sacred fire," the difference as to his age and condition is exemplified, and again, the difference of place, by the passage: "He measures out the inner portion, and the outer portion of "the altar;" even so, in this place, having merely exemplified the acts connected with the obligation of the funeral oblation for the natural father and the rest, by the terms, 'family,' 'estate,' 'funeral oblation,' and 'obsequies,' the cessation of them is declared.

CXI.

1—Chapter 9th. 142. Mit. 318. Digest 3d, 147. Dutt. Mim. 105. Dutt. Chund. 191. 2—Mit. page 263 note.

Reports 2nd 662

23. From this also results, the establishment of the cessation of family connexion with the father's whole brother, and the rest. Therefore also, even the son begotten by the simple adopted son, shall perform [his father's] *supindee kurun, parvunu* obsequies, and the rest, in conjunction even with the [original] adopter. Even so, his son also.

A text of KATYAYUNU held to refer to the 'son of two fathers.'

24. However, what KATYAYUNU, opening the discussion of the 'son of two fathers,' by this text: "Now, when the family connexion of sons, "either adopted, purchased, or son of an appointed daughter, remains "unsettled, through their acceptance by another, *they become sons of two* "*fathers*," and the like, says: "If there be no offspring of these adopters by "their own wives, they [the secondary sons,] take the estate, and give the "funeral oblations to three ancestors; if there be no [offspring], to either [the "giver or receiver], they will give the oblation for both. Having separately "considered both *in one Shraddhu,* they shall call upon both of them." Has reference to the 'son of two fathers,' because of his premising: '*They become sons of two fathers.*'

CXII.

The obligations and rights of the son of two fathers, in regard to obsequies and succession, defined whether other sons exist, or not

25. If either the natural parent, or the adoptive father, have no other male issue, the *Dwyamooshyayunu*, or 'son of two fathers', shall present the funeral oblation to him, and shall take his estate; but not so if there be [male issue]. If both have legitimate sons, he offers an oblation to neither, but takes a quarter of the share allotted to a legitimate son of his adoptive father; [1] from this text of VUSISHTHU [2]: "When a son has been "adopted, if a legitimate son be afterwards born, the given son takes a "fourth part:" and likewise this of KATYAYUNU [3]: "If a legitimate son be "born, the rest are pronounced shares of *a fourth part,* provided they belong "to *the same tribe:* but if they be of a different class, they are entitled to food "and raiment only." The reading in the KULPUTUROO is, '*a third part.*' Those

1--This passage is quoted in the Notes to the Mitakshura, page 318. 2—Dutt. Mim. 158. Dutt. Chund. 201 Ante para. 10. Mit, 316. Jim. Va. 167. Dutt, Mim. 61. Dutt, Chund. 200 and note there.

of *the same tribe,* according to VINYANESHWURU [1] are, the son of the wife, the son adopted, and the rest.

His duties defined in default of sons to both.

26. But if sons are wanting to both, then he shall perform a single *Shraddhu* to both also; in the mode declared above, by the term "*in one Shraddhu,*" &c. Moreover in the HEMADRI is a text of KARSHNAJINI: [2] "As many as there may be degrees of forefathers, with so many, their own "forefathers, let sons given, and the rest associate the deceased; in order, "their sons with two forefathers, their grandsons with one, should [do] the "same. *The fourth degree,* at *pleasure.* [3] This [*supindu* relation] extends "to three degrees." "*At the regular seasons,* there is no distinction of de-"grees: but on the [anniversary] day of death, having invoked them singly, "let him perform the *Shraddhu* according to the proper rite." Which sense is consonant also to the text of KATYAYUNU. [para. 24].

Detailed explanation of the text.

CXIII.

27. This is the meaning: 'The son of two fathers, and the rest, shall 'perform the *supindee kurun* of those dying in the families of both the real 'and adoptive father, together with those of the same degree, [that is] in 'company with the father [of the deceased], and the rest. But the sons of 'those adopted, and the rest, shall perform their *Supindee kurun* together 'with that of both the natural, and adoptive [father]. Their grandsons 'also shall associate their real father with their adoptive grandfather, and 'their real great-grandfather.' *The fourth degree,* their great-grandson. *Pleasure,* desire; that is, they shall invoke the adopter, or not, [as they please]; but the real father, they shall even summon. *At the regular seasons;* that is, at the days of new moon, [*Umavasyu*] and other seasons, the *Shraddhu* according to the degrees of [forefathers] of the real and adoptive fathers, is to be celebrated. But on the anniversary of death, having invo-

1—Mit. page 316. Ante Section 4th, para. 11—et seq. 2—Dutt. Mim. 120. Dutt. Chund. 109.

3— *Ch,hundu* instead of *Ch,hedu* "excluded" which is the reading of the Dutt. Mim. and Chund.

ked the single person alone, let them celebrate the *Ekoddishtu shraddhu* for him.

Opponent's argument against the term 'simpleadopted'

28. Some however say: 'Since the Rite of simple adoption is not '[mentioned], it does not exist; and there is no agreement to the effect: 'He 'belongs to us both', because no Rite for it exists. One taken without this 'agreement, therefore, is even a son of two fathers.—And even by him, 'either a double *shraddhu*, or a single one, may be celebrated, by invoking '[singly or together] both his real and adoptive father, in the *Umavasyu* and 'other [*shraddhus*.] But the *supindee kurun*, *Parvunu*, and other *shraddhus*, 'must be performed for the adopted son, in company with both his real and 'adoptive father, by his son. Even so, by his son, and the rest.'

Answered and refuted.

29. This must be considered. Because, though the phrase 'simple 'adopted' is certainly no where mentioned, still, however, this [meaning] satisfactorily results, even from the declaration of the entire cessation of the connexion with the real father and the rest, by the above recorded text of MUNOO [para. 21] which prohibition does not apply in a *Dwyamooshyayunu* adoption. Further: A Marriage in the family of the procreator [*Veeji*] within seven degrees, which is altogether illegal according to the Text of GOUTUMU [1]: "With the kinsmen on the side of the father, viz. of the procre-"ator [*Veeji*] beyond the seventh degree; and with those on the mother's "side, beyond the fifth &c.," would be unmeaning in a *Dwyamooshyayunu* adoption, because the *Supindu* affinity [to the procreator] still exists there-in [beyond that]. Therefore, the term, 'simple adopted,' must necessarily be expressed, to make the same agree with that of the Text, because of the declaration of the prohibition of the *Supindu* connexion.

CXIV.

A text of the *pruvur-adhyayu* adduced in

30. Moreover, in the PRUVURADHYAYU [it is said] [2]: "They who become "sons of two fathers, [*Dwyamooshyayunu*] whether adopted, purchased, or the

1—Dutt. Mim. 107. 2—Dutt. Mim. page 126 and note. Dutt. Chund. 182.

" rest, cannot take in marriage any one of *either Gotru*, after the example of " SHOUNGA and SHAISHIRU." In which also, the term, *either Gotru*, is spoken of the *Dwyamooshyayunu*. And the prohibition of connexion in the real family [*Gotru*] is declared by the text of MUNOO; which is the difference [between the two]. By the distinction also, between adopted son, 'simple,' and, 'son of two fathers' [the term, simple] is proper to be included; whence even the propriety of the term 'simple adopted son' is established.

favour of the argument.

31. Even so BHUTTU SOMESHWURU [1], satisfactorily reconciles the one doctrine, under the text of MUNOO [para. 21]: " That there was a cessation " of the *supindu* connexion between URJOONU [as] the son of KOONTI, [born " after she was] given in adoption by [her father] SOORU to KOONTIBHOJU, " and SOOBHUDRA, [as] the daughter of WUSOODEVU, who was the son of " SOORU," with the opposite opinion, " that URJOONU could not marry the " said SOOBHUDRA," as might seem to result from that text of GOUTUMU, " [para. 29] applying solely to the prohibition of [a wife] come of the father's " kindred," by adducing the affirmation of the commentaries in favor of the utter exclusion of the family connexion [after the adoption.] [2]

And supported by a quotation from the Mimansa.

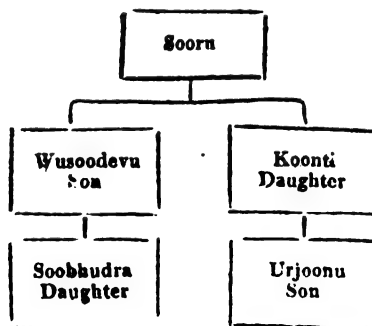
32. As for what SOME AUTHOR says: 'That the *supindu* connexion of ' KOONTI with the family of SOORU, is declared by SOMESHWURU, under the ' Text of GOUTUMU, to continue through seven degrees,' the reason is, that

CXV.

An author's opinions refuted.

1—In the Mimansa.

2—This will be more intelligible from the following Genealogy.

Urjoonu's real father was Indru, though he took the name of Panduvu from his mother's husband Pandeo, and in marrying Soobhudra, espoused his maternal uncle's daughter [which is reprobated in general. See Chap. 1st, Sec. 1st, para. 13] but as the mother had been previously given away in adoption, their relationship, as cousins by the mother's side, had ceased.

he has not read the Book. Therefore, the text of GOUTUMU, after having previously declared the cessation of *supindu* relationship, refers to the prohibition [of marriage] in the family of the natural father, and not as considering the subject of *supindu* relationship. In this way, the correctness of the terms, son 'simple adopted,' and 'son of two fathers,' being established, the possibility of an agreement to the effect: "He shall belong "to us both," [para. 21] is likewise established; for the object is manifest, by the accepter knowing him to be 'son of two fathers.' And again, the *supindu* relationship of the simple adopted son, extends, in his adoptive father's family, to seven degrees on the father's side, and to five degrees on the Mother's side.

The authority of three Texts denied, to apply to the simple adopted son.

33. As for these texts, of VRIDDHU GOUTUMU: [1] "The sons given, purchased, and the rest, who are adopted from those of his own general "family, by the observance of form, enter the lineage [*Gotrutu*, of the adopter]. But the relation of *supindu* is not included," as well as of BRUHUT MUNOO: [2] "Sons given, purchased, and the rest, retain relation of *supindu* "to the natural father, as extending to the fifth, and seventh, degrees: like "this, their general family, which is also that of their adopter," and moreover of NARUDU [3]: "For the sake of religious merit, [being adopted] like "the real son, under the family name of each respectively [*tut tut gotrenu*] "sons [who are] reared: for such, merely participation in a share, and [the "oblation of] the funeral cake, is declared" they are, all three, not of good authority; [at least, if their authority be good, they are to be used only for the sake of determining the want of *supindu* relationship of] the *Dwyamooshyayunu*, as far as seven generations, in the family of the adopter; for, in the case of a simple adopted son, his *supindu* relationship, as far as seven generations in the family of the adopter [*Paluk*] is declared [to commence],

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1—Dutt. Mim. 108-26. noticing our Author's objection· Dutt. Chund. 191.

2—Dutt. Mim. 27 and note q. v. 108.

3—Dutt. Mim. 199 note, where our Author is again noticed and the text attributed to Devulu.

by the before quoted text of GOUTUMU, [para. 29] and because his *supindu* relationship at the same time, in the family of his real father, is declared to cease by the text of MUNOO, [para. 21.] CXVI.

The reasoning of certain authors declared to be unfounded.

34. As for the following matter, written by certain respectable authors in discussing the subject of *supindu* relationship: "Yet if [an adopted "son's] investiture and other initiatory rites, have been celebrated in the "general family [*Gotru*] of his real father, his *supindu* relationship to his "real father's family [*Kool*] is retained, both to the father, and to the "mother; to the fifth degree [from the mother], and to the seventh [from "the father]: but to three degrees in the family of the adopter, by reason "that there is a want of the state of begetting, and of investiture, to the "author of the secondary paternal relation, the adopter. However, if the "adopted son be [so] initiated in the general family of the adopter, his "[*supinda* relationship] with the adopter and the rest [of his family, will "continue] even to seven generations, and to five [as above]:" its foundation is not known.

Conclusion drawn.

35. Again: If the paternal relation exists not, by reason of the absence of the acts of begetting, of investiture, and the like, in what manner arises the adopted son's *supinda* relationship to either [even], as far as three degrees, or his performance of *Shraddhu* and other ceremonies for the adopter and the rest of his family? Neither can it be said, 'the paternal relation and *supinda* relation are [necessarily] connected,' because by this, on the absence of the first, the want of the *supinda* relationship would ensue. The result of it is this: *Supinda* relationship even [of the adopted son], with the adopter and the rest of his family, has been already pronounced from the text of GOUTUMU and others [para. 29]: "With the kinsmen on the side "of the procreator beyond the seventh degree." And this is conclusive.

Summary in conclusion.

36. [1] Now this is the rite for gift and acceptance of a son. In this mat-

1—The remainder of this Section, though not found in any Goojurat Copies was introduced from one obtained at Poona. It appears to be an extract from some other work, or, a summary of the doctrine of the Muyookhu, by some more modern authors.

ter, the power of giving [in adoption], where there are more sons than one, allows even of any one of them, not being the eldest; and that of acceptance, attaches to one who has not had a son born, or whose sons are dead. The right of married women [to adopt, is good] with the orders of the husband; in default of him, of their [own] fathers, and the rest. Of *Shoodrus* [adopting], the daughter's son, or the sister's son, are to be taken, and no other. By the other [superior classes] however, the nearest *supinda* relation; in default of them, the remote [kindred], but not one of another cast.

CXVII.

The Gift inceptive,

37. Then the giver, on the day [fixed] for the acceptance, having duly called to mind the [proper] time, and the other [considerations], and having thus vowed: 'I am about to make a gift of my son for the cessation,[2] between myself and the rest [of my family], and this son, of the several duties 'arising from the reciprocal connexion, at present existing between [us, as] 'father, son, and the like,' shall perform the *Gunesu pooja, svusti vachun,*[3] *matreka pooja, Vriddhi shraddhu,* and the other rites.

The acceptance inceptive.

38. The accepter too, having fasted on the day preceding that for the acceptance, and on the next day having summoned his kinsmen, and made known his taking a son to the king; having called to mind the time, and other [considerations], and having thus vowed: 'I am about to take (this 'person) as a son, to the cessation of the mutual connexion 'of father, son, 'or the like, at present subsisting between him, and his procreator and the 'rest (of that family,) and for the accession between him and me, and the 'rest (of my family), of the duties mutually arising from the respective con-'nexion of father, son, and the like (by this adoption),' and having performed, the *Gunesu pooja, Svusti vachun, Matreka pooja, Vriddhi Shraddhu, Acharyu vurun,* and the various reverences to be made, after a special vow to the *acharyu,* with the earrings, ring, suit of clothes, turban, *Mudhoo purku* and the rest, let him give a feast to three *Brahmuns,* and to his kindred.

2—In the original, it is "continuation" pruvritti, for nivritti, which the sense requiring, was adopted.

3—A religious rite preparatory to any important observance [Wilson], where the mode of it is described.

39. And the *Acharyu*, having thus vowed: 'I am about to do my proper duties,' and having performed the marking out of the altar, and the other [acts] as far as the consecration of the fire, inclusive, shall celebrate the rites enjoined in the words of the *Vedus* [1] and the rest, as far as the straining of the clarified butter inclusive.

Officiating priest's duties.

CXVIII.

40. Then let the accepter, having gone near the giver, thus beg, 'Give me this son' [2]; and the giver, with relation of the five prayers [the initial words of the first of which are] *ye yujnyenu*, having called to mind the time, and the rest, having repeated his motives as above detailed, shall declare, 'I give you this son, adorned with ornaments, according to my ability' This is the gift of his son, commencing with the words of the *Vedus*. [3]

Gift completed.

41. Then the accepter, having accepted him with the prayer *devusyu twu*, and the others, and having repeated the *Kunu stooti* in the form enjoined by his own *Shakha*, having inaudibly repeated the mystical invocation *ungad ungat*, &c. having kissed the forehead of the child, let him carry him within his own house, adorned with clothes and so forth, accompanied with rejoicings.

Acceptance completed.

42. Next, the *Acharyu*, having performed the setting up of the clarified butter, and the rest, as far as the portioning of it, inclusive, having performed a burnt offering even with the clarified butter, with the *Vyahriti* incantation, both backwards and in due order, having dressed the oblations, let him offer a burnt offering. He then commences the principal burnt offering of dressed oblations, for acceptance of a son, with the words of the VEDU [4]. Having commenced with the words, "*Toobhyum ugne*," &c. let him conclude with those commencing "*Pragvudutluh*." Thus ends the rite of adoption.

Priests' duties, continued and concluded.

CXIX.

1—From 'Unvadhane chukshoo,' line 1st, to 'krutum,' line 3d.

2—Dutt. Mim. 97. For this and the following passages, turn to para. 8, and the references there.

3—From 'Ye yujnyenu,' line 5, to 'Guti.'

4—In the last line of the page.

SECTION VI.

PARTITION OF DEBTS, AND OF CONCEALED EFFECTS.

The debts, to be considered at a partition are of three kinds:

1. This settled, I return [to my subject] [1] KATYAYUNU states a distinction in partition of debts[2]: "The debt of the father, one incurred by a parcener "himself *on account of the debts of the father*, and one *specially his own*; "debts so incurred, must be examined on a partition with the kinsmen." *On account of the debts of the father*, incurred for the sake of discharging the father's debts. *Specially his own*, [contracted by other] than himself, for the maintenance of his family. THE SAME AUTHOR says: [3] "A debt "contracted by a brother, a paternal uncle, or a mother, for the [support of "the] family, must be fully discharged by the coheirs, when partition is "made."

Such debts, when covered by the estate to be first paid, and the residue to be divided.

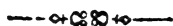
2 THE SAME AUTHOR also says, in case the debt be less than the property: [4] "But having given the debt [to the creditors], and what was "*bestowed* through affection, let them divide the balance." *Bestowed*, promised. NARUDU: [5] "What remains, after discharging *the father's donation*, "and after payment of his debts, may be divided by the brethren, so that "their father continue not a debtor." *The father's donation*, what had been promised by the father. THE SAME AUTHOR says: [6] "What has "been given for religious purposes, and through affection, and the debt "which has been added by himself, that [and] the visible [estate], let "them divide; [any other debt] is not to be given, out of the paternal es-"tate." The meaning is this: 'What has been given for religious purposes, as well as through affection; [that is] what it has been agreed to give; and what has been added by the father himself, [that is] what has been made

Payment out of the paternal estate restricted to particular obligations. CXX.

1—From Section 4th, para. 40th. 2—Digest 3d, 390. 3—Digest 3d, 389.
4—Digest 3d, 383, where a different turn is given to the Text. 5—Digest. 3rd, 73 Jim. Va. 21. where the same difference is observable between these two translations, as in that of the foregoing text and our author, whose version is altogether different from both. 6—Digest 3d, 391.

by himself; such debts [and the visible estate] they shall divide. Payment [*Danu*] is not [allowable], out of the paternal estate, of debts other than these.'

3. THE SAME AUTHOR also says, in suspicion of effects undiscovered:[1] "A house, arable land, or quadrupeds, discovered [after partition, as the "property of the deceased], must be [equally] divided; if it be justly sus- "pected that effects are concealed, a discovery by ordeal is prescribed by "law." "Thus MUNOO declared, that household utensils, beasts of burthen, "and milch cattle, ornaments, and *workmen*, must be divided, when disco- "vered [among the heirs]: if effects are [suspected to be] hidden, a discovery "must be obtained by the *Koshu* mode of ordeal[2]." *Workmen*: slaves, and the like. Here even, the *Koshu* ordeal itself has been fixed in such matters, in the chapter on ordeals, by this very authority: "In sustaining the truth "of doubts in partition among heirs, at all times, [and] in settling a multitude "of proofs [*kriya*], let them even undergo the *Koshu* ordeal."

Partition of effects concealed and discovered after partition; with the mode prescribed for their discovery.

SECTION VII.

OF PROPERTY NOT LIABLE TO DIVISION, [*UVIBHAJYUM.*]

1. MUNOO says[3]: "Wealth, however, acquired by learning, belongs "exclusively to any one of them who acquired it; so does any thing given "by a friend, received [at or] on account of marriage, or presented as a "mark of respect to a guest." VYASU:[4] "Wealth gained by science, or "earned by valour, or *received from affectionate kindred*, belongs, at the time "of partition, to him [who acquired it], and shall not be claimed by the

Certain property not subject to partition.

CXXI.

1—Digest 3d, 395, where the text is attributed to Katyayunu; at page 90 of that Vol. the last stanza is read differently, and attributed to BRUHUSPUTI. 2—See Chap. 3d. 3—Chap. 9th 206. Jim. Va 110-116. Digest 3d, 332. Reports 1st, 64. 2d, 67. 4—Jim. Va. 110-17. Digest 3d, 333.

" coheirs." *Received from affectionate kindred;* [*Soudayukum;* this term] will be hereafter explained [1].

If gained without assistance from the common stock.

2. This [wealth] must be understood to be acquired, without loss to the father's estate. Thus also YANYUWULKYU: [2] " Whatever else is acquired " by the coparcener himself, without detriment to the father's estate, as, a " present from a friend, or a gift at nuptials, does not appertain to the coheirs; " nor shall he who recovers hereditary property, which had been taken away, " give it up to the parceners : nor what has been gained by science."

Special rule regarding land recovered,

3. But SHUNKHU declares a special rule, relating to the recovery of land, derived from ancestors but long lost: [3] " Land [inherited] in regular suc- " cession, but which had been formerly lost, and which a single [heir] shall " recover solely by his own labour, the rest may divide, according to their " due allotments; having first given him a *fourth part.*" That is, ' having given to the recoverer a *fourth part,* of the recovered property, they shall divide the balance equally, with the recoverer.'

Other texts adduced :

4. MUNOO says [4] : " What a brother has acquired by his labour, with- " out using the patrimony, he need not give up to the coheirs; nor what " has been gained by science." VYASU [5] : " What a man gains by his own " ability, without relying on the patrimony, he shall not give up to the " coheirs, nor what he acquired by learning." Acquisition by *learning* is explained by KATYAYUNU: [6] " Wealth gained through science, which was " acquired from a stranger, while receiving a foreign maintenance, is term- " ed acquisition through *learning.*"

Acquisitions through learning enumerated CXXII,

5. THE SAME author elucidates this term: [7] " What is gained by the " *solution* [of a difficulty], after a prize has been offered, must be consi- " dered as acquired through *science,* and is not included in partition [among

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1—At para. 12; and in Section 10th, para. 8th. 2—Mit. 268. Jim. Va. 109-117. Digest 3d, 343. Reports 1st, 64-244. 3—Mit. 268. Jim. Va 135 Digest 3d, 365. 4—Chap. 9th 208 Mit 271 Jim. Va. 109-117. Digest. 3d, 339, Of the two readings of this text, our Author adopts that of the Mitakshura. 5—Jim Va, 109, Digest 3d, 341, 6—Mit, 271, Digest 3d, 343. 7—Jim, Va, 127, Digest 3d, 333.

" coheirs]." " What has been obtained from a pupil, or by officiating as
" a priest, or for [answering] a question, or for determining a doubtful point,
" or through *display* of knowledge, or by [success in] disputation, or for
" *superior* [skill in] *reading*, the sages have declared to be the gains of *science*,
" and not subject to distribution." " The law is the same in *regard also to*
" *artizans* [*Shilpee*], and to *increase of price*" [1]: " A prize which has been
" offered for the display of superior learning, and a gift received from a vo-
" tary for whom a sacrifice was formerly performed; or a present from
" a pupil formerly instructed, sages have declared to be the acquisition of
" *science:* what is otherwise acquired, is [the] joint property [of the coheirs]."
" Even what is won by surpassing another in learning, after a stake has
" been deposited, BRUHUSPUTI pronounces the acquisition of *science*, and
" impartible. What is obtained by the boast of learning, what is received
" from a pupil, or for the *performance of a sacrifice*, BHRUGOO calls the ac-
" quisition of *science*."

And defined.

6. *Solution*, according to the MUDUNU RUTNU, means, the reading of [passages of the VEDUS] having the order [of construction, *krumu*], and the sentences [*Juta*], and the like [2], duly linked together. Some again, say it is the interpretation, in a public assembly, of concealed [meanings] required to be made known. The construction is, ' solved after a prize [has been ' offered].' *Display*, public exhibition. *Superior reading*, pre-eminent reading. *In regard also to artizans*, meaning, that this law, respecting science, is to be applied also among Artizans. *Increase of price*, caused by great satisfaction [with the work]. *Performance of a sacrifice* is merely an example.

All such liable to partition if made with assistance

7. Here also, in all these cases, indivisibility applies, only when no detriment has fallen on the paternal estate, in acquiring, as well superior

1 Digest 3d, 334 The quotation in Jim, Va, breaks off after this.

2 See Asiatic Researches 8th, 390.

from the common stock.

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knowledge, as wealth; for, in case of detriment [to the estate, the acquisition] is even divisible. Even so, KATYAYUNU says: [1] " Yet BRUHUSPUTI " has ordained, that wealth shall be partible, if it was gained by learned " brothers who were instructed in the family by their father, or paternal " grandfather, [or uncles]; and it is the same, if the wealth were acquired " by valour, [with assistance from the family estate."]

The acquirer getting a double share.

8. Also in case of loss to the paternal estate even, the acquirer gets a double share, from this text of VUSISHTHU [2]: " He amongst them, who has " made an acquisition, may take a double portion of it."

An exception with regard to acquisition by learning.

9. NARUDU states a distinction in some cases, in acquisition of wealth through learning: [3] " He who maintains the family of a brother studying " science, shall take, even though *not told*, [*Ushrootu*] a share of the wealth " gained by science." The word *ushrootu* means *unlearned*, according to the MUDUNU RUTNU. [4] But the proper sense is, *not promised*, thus: 'I will give a share.'

Distinction in wealth acquired without detriment to the paternal estate.

10. GOUTUMU [5] declares a distinction also, with regard to wealth acquired without detriment to the father's estate: " His own acquired wealth, " *a learned man* may, if he please, give up to unlearned coheirs." He who is versed in knowledge, is a *learned man*. The meaning is, that, with his own pleasure, he may give it to his unlearned brethren. KATYAYUNU [6]: " No " part of the wealth, which is gained by science, need by given, by a learn- " ed man, to his unlearned coheirs; but such property must be yielded " by him, to those who are equal, or superior, in learning." [7]: " A learned " man need not give a share of his own acquired wealth, without his assent, " to an unlearned coheir: provided it were not gained by him, using the

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1—Digest 3d, 340. 2—Jim. Va. 39 Digest 3d, 109-356. 3—Mit. 270 Jim. Va. 111 Digest 3. 361.

4—The commentators are here differing about the sense to be given to *Shrooti*, whether it is to mean the *Vedus* [and thence the *Knowledge* of them] or hearing, [and thence telling, *promise*, which last our author prefers.

5—Jim. Va. 112 Digest 3d, 349, but our author adopts a different reading. 6—Jim. Va. 112 Digest 3d, 342.

7—The following text is one of NARUDU Jim. Va. 112. Digest 3d, 342.

" paternal estate." According to MUDUNU, this prohibition applies, only where there exists other property for those brothers who are present: but on failure of other property, [a share of it] even must be given to them.

Gifts from the father &c, impartible, as well as acquisition by valour.

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11 BRUHUSPUTI declares that to be impartible, which has been given by the father or other [person]: " That which may have been given, either by " the paternal grandfather, or the father, as well as by the mother, is not to " be taken back; any more than that acquired by valour, or the wealth of " a wife." NARUDU [1]: " Excepting what is gained by valour, the wealth " of a wife, and what is acquired by science, which are three sorts of pro- " perty exempt from partition; and any favor conferred by a father." KA- " TYAYUNU: [2] " That which is taken under a standard, is declared not to " be subject to distribution. And also, what is seized [by a soldier] in war, " after routing the forces of the enemy, and after risking his life for his " lord, is named spoil taken under a standard." THE SAME AUTHOR says: [3] " When [a soldier] performs a gallant action, despising danger; and favor " is shewn to him by his lord, pleased with that action; whatever property " is then received by him, shall be considered as gained by valour."

Acquisitions by valour partible, if assisted by the common stock.

12. Here VYASU states a distinction: [4] " The brethren participate in " that wealth, which one of them gains by valour or the like, using any " common property, either a vehicle [or weapon] or the like; to him, two " shares should be given: but the rest should share alike."

Gift of affectionate kindred.

13 VYASU defines the gifts of affectionate kindred, [*Soudayukum*]: [5] " That which is received, by a married woman or *by* a maiden, in the house " of her husband or of her father, from her husband or from her parents, is " termed the gift of affectionate kindred." KATYAYUNU: [6] " What is re- " ceived with a damsel equal in class, at the time of accepting her [in

Wealth received with a maiden defined.

1—Mit. 253, Jim. Va. 110-117 Digest 3d, 343. 2—3—Jim. Va. 131 In the Digest 3d 367, these texts are attributed to MUNOO, but not found in his institutes. 4—Jim. Va. 111 Digest 3d, 71.

5—The text is afterwards, in Sect. 10th para 8th, attributed to KATYAYUNU, and read differently " *with* a maiden.

6—In the Digest 3d, 363, this text is attributed to MUNOO, but is not found.

" marriage], let a man consider as *wealth received with the maiden;* it is
" deemed pure, and promotes increase [of prosperity]: But let him know
" that to be received on account of marriage, which is accepted by him
CXXV. " with his bride: all such wealth is considered as vindicating the solemn
" rite."

Partition of wealth received with a maiden governed by like rules as acquisitions by learning.

14 What is acquired in this, or a similar manner: "The *Arshu* rite " again [consists in giving his daughter] after having received a pair of kine." [1] is denominated, *wealth received with the maiden.* Here even, like wealth acquired by learning, such acquisition also is impartible, if it be acquired without detriment to the father's estate: But, if gained by any other means, except learning or the other [specified modes], it is even liable to partition. And so MUNOO: [2] " And if all of them, being unlearned, ac-" quire property [before partition] by their own *labour,* there shall be an " equal division of that property [without regard to the first born]; for it " was *not* the wealth *of their father:* this rule is clearly settled." *Labour,* employment in agriculture &c. *Not of their father,* is to be taken, as without assistance from the father's wealth.

Other things exempted from partition.

15. Other things exempt from partition, have been enumerated by MUNOO: [3] " *Clothes, vehicles, ornaments; prepared food, water; women; sa-" crifices and pious acts;* as well as *the common way,* are declared not lia-" ble to distribution." *Vehicles,* conveyances. The *clothes, conveyances,* and *ornaments,* belong respectively to the possessor, if they are of equal value. If the value of one article be more or less than that of another, then let them be divided.

16. But the *clothes,* &c. and other [things] worn by the father, must be given to the person who partakes of food at his obsequies; as directed by BRUHUSPUTI: [4] " The *clothes* and ornaments, the bed, and similar furniture,

1—Mit, acharadhyayu leaf 8 page 1st. See MUNOO, chap. 3d, v. 29. Digest 3d, 604. 2—Chap. 9th, v. 205. Digest 2d, 584. Reports 2d. 57. 3—Chap. 9th, 219. Mit. 272. Jim. Va. 132, Digest 3d, 378. 4—Mit. 272.

" appertaining to the father, as well as his vehicle and the like, should be
" given, after perfuming them with fragrant drugs and wreaths of flowers,
" to the person who partakes of the funeral repast."

Special rule for certain animals.

17. If the goats, &c. be unequal in number, a distinct mode of disposal is ordained by MUNOO:[1] " Let them never divide a single goat or sheep, " or a single beast with uncloven hoofs: a single goat or sheep belongs to " the first born."

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Explanation of the former text continued.

18. Both the *prepared food* and *water*, are to be enjoyed [by all] according to their occasions. *Women*, female slaves. If they be of an odd number, they are to be caused to work [for all] according to their occasions. But if of an even number, they are to be distributed.

The father's women reserved.

19. However, if they were set apart by the father, they are not to be distributed, even if of an equal number, by reason of this text of GOUTUMU;[2] " No partition is allowed, in the case of women connected [with the father " or with one of the coheirs]."

Explanation of the terms of the Text continued.

20. According to the KULPUTUROO: 'By the term *sacrifices and pious acts*, [*Yogu-kshemu*] holy councillors, family priests, and the like, are denoted.' But LOUGAKSHI says[3]: " The learned have named a *conservatory act*, " *kshemu;* and a *sacrificial one, yogu:* both are pronounced indivisible: and " so are the bed and the chair." In this place, a *conservatory act*, means [construction of] tanks, gardens, and the like: *a sacrificial one*, a grand sacrifice, a feast to *Brahmuns*, and the like. The meaning is this: Whatever property is, with consent of all whilst in a state of unity, set apart for this purpose, and kept by one individual, with that very property that act of religion shall be executed, by that same individual, and by no other: Neither shall all join for the purpose. *The common way*, the way to the house or the like, also land for a cattle pasture, and the like.

1—Chap 9th, 119. Mit. 273. Digest 2d, 581.

2—3—Mit. 274. Jim. Va. 132-3, notes.

A Text of SHUNKHU and LIKHITU and of VYASU, explained.

21. As for this text of SHUNKHU and LIKHITU:[1] " No division of a " *dwelling* takes place; nor of water-pots, ornaments, and things not of " general use:" and this of VYASU:[2] " A place of sacrifice, *a field*, a " vehicle, dressed food, water, and women, are not divisible among kins- " men, though [transmitted] for a thousand generations," whereby they declare the impartible nature, both of a *dwelling* and a *field*, they have reference to a religious foundation, and land for cattle pasture, and the like; [or else] to the prohibition of the partition, by the *Kshutriyu* or other [son of a *Brahmun* by women of the other tribes,] of these two things, obtained [by the *Brahmun*] by acceptance of donation; because it has been already noticed as forbidden.[3] Or [thirdly], it may refer to a partition of even these two things, when of little price, at a valuation, and not by actual division of them.

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Rules for appropriating certain things of an impartible nature.

22. BRUHUSPUTI declares a distinction, in regard to Clothes and other matters:[4] " They by whom it is affirmed, that *clothes* and the like are " indivisible, have not proved that the collected wealth of opulent men, " their vehicles and ornaments, shall not be divided; property held in " common [would be] unemployed, for it cannot be given to one [in exclu- " sion of another]: therefore it must be divided by [some mode deduced " from] reasoning; else it would be useless. By the sale of clothes, and " ornaments; *on the recovery* of a written debt; by compensating the dressed " food with [an equal allotment of] undressed grain; an [equitable] partition " is made." " Water drawn from a [single] well or pool, shall be taken by " turns: Let a [single] female slave be successively employed by coheirs in " their respective houses, according to their several shares; if numerous, " the slaves shall be distributed in equal allotments: such is the law in " respect of female servants. A bridge and a *field* shall be shared [by

1—Jim. Va. 133. Digest 3d, 372. 2—Jim. Va. 133. Digest 3d, 375.
3—Ante Section 4th, para. 28. 4—Digest 3d, 378-9.

" coheirs] in due proportion: and the pasture ground for cattle shall be " used by the coheirs in proportion to their allotments." *On the recovery*, meaning, by levying it from the debtor.

23. KATYAYUNU:[1] " *Wealth* which has been fixedly assigned for the " purpose of religion, and entered in a Deed; and likewise water; slaves " also, and such *fixed property* [or a corrody, *Nibundhu*] as has gone in " order of descent; clothes that have been worn, and ornaments, *do not* " *resemble* [divisible effects]. According to the time they have been enjoyed, " even so let them be made use of [in turns] by the brothers." *Wealth*, means such as has been set apart as the share [to be expended for] religion, and so entered in a Deed. *Water*, contained in wells or the like. *Fixed property*, a means of livelihood [*Vritti.*] *Do not resemble*, [that is, are] unfit for partition.

Other articles of a like nature noticed.

CXXVIII.

24. The division of property, concealed by deceit from the other brethren, is thus explained by YANYUWULKYU:[2] " *Effects*, which have been *withheld* " by one coheir from another, and which are discovered after the separation, " let them again divide in equal shares: this is a settled rule." *Effects, withheld*, whether by the eldest, younger, or other brother, among the coheirs; for thus says MUNOO:[3] " An *eldest Brother*, who from avarice " shall defraud his *younger* brothers, shall forfeit the honours of his primo- " geniture, be deprived of his [additional] share, and be chastised by the " king."

Division of common property fraudulently concealed or withheld.

25. In this place, also, the term *eldest brother*, is used merely to denote the heirs generally, by the argument exemplified in the loaf and staff;[4] and the meaning is: 'If blame attaches even to the eldest, how much more to the younger ones?' Even so GOUTUMU:[5] " Him indeed, who deprives

By any of the coheirs whomsoever.

1—Digest 3d, 375. The translation is altered to suit the gloss.

2—Cole. Mit. 293. Jim. Va. 230. Digest 3d, 397.

3—Chap. 9th, 213. Mit. 294. Digest 2d, 564.

4—Mit note to page 294.

5—Mit. 294, [from which, this appears to be a passage of the *Vedus*:] The subsequent gloss is all, except a few words, a transcript from the MITAKSHURA.

" an *heir* of his right share, he does certainly destroy; or, if he destroy not " him, he destroys his son, or else his grandson." Whoever debars, or excludes from participation, an heir, or person entitled to a share; he, being thus debarred of his share, destroys that person, who so debars him of his right; or if he do not destroy him, he destroys his son, or his grandson.

A fresh partition of it ordained.

26. NARUDU: " That wealth, which has been acquired by a man after " separation, belongs to himself alone: what has been recovered, after being " seized or lost, and the *before mentioned*, [property] *may be afterwards* [di- " vided]." *Before mentioned*, as [property] concealed by any one, among the coheirs. *May be afterwards*,—divided; is wanting [to complete the sense.]

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MUNOO [1]: " When any common property whatever, is brought to light " after partition has been effected, that is not considered a [fair] partition; it " must even be made over again."

Means for ascertaining a disputed partition.

27. YANYUWULKYU: [2] states the modes of decision in case of denial of partition made by any one: " When partition is denied, the fact of it may " be ascertained by the evidence of kinsmen, relatives, and witnesses; and " by written proof, or by house or field *separately possessed*." From the term, *separately possessed*, we must understand it of house or land separately given [to each,] from the connexion between the adjective, and the thing denoted by it. NARUDU also says [3]: " If a question arise among coheirs in regard " to the fact of partition, it must be ascertained by the evidence of kins- " men, by the record of the distribution, or by separate transaction of affairs."

The exercise of religious duties another mode of proof.

28. THE SAME author says: [4] " The religious duty of *unseparated* bre- " thren is single. When partition has indeed been made, religious duties " become separate for each of them." Here the term *unseparated*, is inten-

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1—This text is not found in the Institutes. Reports 1st, 161-211-212.

2—3—Cole Mit 376. Jim. Va. 236. Digest 3d, 407-414.

4—Mit. 377. Digest 3d, 417. Reports 1st, 161-211.

ded even to denote the condition, whilst the substantive, *brethren*, is [merely] a general term, of which the condition is so denoted. By this [reasoning,] in every unseparated family, of whomsoever it may consist, father, grandfather; son, son's son; paternal uncle, brother, brother's son, or other [member], the religious duty is even single. [1]

The performance of religious duties in a family explained.

29. Here again, as, in the unity of place, time, agent, and the like, one agent is by reasoning obtained for several causes, as supporting several parts of one act; so even, we may understand from the text, that there may be distinct acts, of agents [otherwise] unseparated. Hence, all those religious acts required for performance of sacred, as well as of more common Rites, even of unseparated brethren, are separate for each, in manner of the distinctions in the nature of a consecrated and a common fire, and the like, though mutually connected. Even so the *shraddhu* also, of the paternal uncle, brother, son, or other, [dying without a son] at the *Umawasyu*, and other [seasons], is even separate, by reason of the separation of the deified [person from the *parvunu* rite]: But the *shraddhu* &c. of brothers [dying] without [maintenance of] a sacred fire, is to be executed by one instrument [or agent] only, because all the deified persons are conjoined. In case of separation of place, by residence abroad, the *shraddhus* are even separate. The [extra] acts with the fire, requisite for the rites of those who maintained a sacred fire, also, are even separate; but the worship of the household deities, the *Vaiswudevu* and other rites, are to be done by one agent only. Even so SHAKULU says: [2] "Residing with one dressing of food, worship of a single "household deity, and moreover one single sacrifice at meals to the "*Viswudevus*, or manes, shew unity. In a family of divided brethren, these "acts are performed in each house separately."

CXXX.

1—Reports 2d, 67.

2—Reports 1st, 212.

Two Texts of Asvulayunu quoted.

30. As for the text of Asvulayunu, as quoted in the Parijatu: "Of "those who reside with one dressing of food, even if [previously] separa- "ted, O my lord, one alone shall perform *those* four sacrifices, *which* "*follow* the *Vak yugnyu*; if men of the twice born classes, unsepar- "ated as well as separated, have their meal dressed separate, let them "each celebrate these sacrifices distinct, previous to taking their food, day "by day:," it has reference to persons reunited [after separation], because this conclusion is clearly ascertained, from the one phrase, "of separated "persons also, residing with one dressing of food," and the other: "of sepa- "rated, and unseparated [coparceners," in the text].

And examined, though of doubtful authority. CXXXI.

31. Therefore, in case there be a separate dressing of food, among reunited [coparceners], the great sacrifices [*Muha yugnyu*] are separate. The *Vak yugnyu*, is the *Bruhmu yugnyu*. The phrase, *those which follow it*, is here the *Utudgoonu* form of a *Buhoobrihi* compound, [not being a component part of that which it denotes]; or if it were of the other form, [being a component part], the phrase, 'the *Vak yugnyu*, and the rest', would be void of meaning; for the ascertainment of all the four is certain, even from the fact that: In giving up the first of the five ceremonies, there would be no attainment of the end. Hence, the *Bruhmu yugnyu* is to be even separately done. But [after all], these two texts are not respected by venerable authors.

The same objection applied to some Texts quoted in other books.

32. And these texts also, recorded in the Dhurmu Pravrutti: "Sons un- "separated must celebrate one anniversary *shraddhu* for both parents: if "they be in different countries, they may perform separately [it, with] the "*Durshu* [or *Umavasyu*] and monthly *Shraddhus*: If they be abroad in other "towns, unseparated brethren are, even at all times, to celebrate the *Dur-* "*shu* and monthly *Shraddhu* for both parents, each separately: When unse- "parated, but resident in different towns, each living upon the wealth acqui- "red by himself, those brothers should celebrate the *Shraddhu* and *Par-* "*vunu*, each separately," with the following one in the Smriti Sumooc'chuyu:

" The *Viswudevu* sacrifice, and the anniversary *Shraddhu*, as well as the " *Muhaluyu* [or *Pitru pukshu*] Rite, are, in case the family be spread abroad, " to be celebrated separately, and the *Durshu Shraddhu* in like manner:" are, by a certain author, said to have reference te reunited brethren, residing in different countries. The correct opinion however is, that these even are all unauthentic.

33. Or else, if there be unity of place, time, agent, and the rest, the instrumentality of one only, is found by reasoning. But where the agents are different, the same results by the text itself; for, in a difference of place, there is a want of concurrence both of the text and reasoning too; and therefore, the separate performance of *Shraddhus* and other Rites, by any one of them whomsoever, is founded in reason: which is my conclusion.

Conclusion drawn.

34. NARUDU declares other signs also, of partition: [1] " Separated, but " not unseparated, Brethren, may reciprocally bear testimony, become sure- " ties, bestow gifts, and accept presents." " *Gift and acceptance;* cattle, " grain, houses, land, and attendants, must be considered as distinct among " separated brethren, as also *the Rules of gift; income,* and expenditure." " Those by whom such matters are publickly transacted with their coheirs, " may be known to be separate, even without written evidence." *Gift and acceptance,* have reference to borrowing transactions. These very terms, 'gift and acceptance,' are repeated in the second text [1] for the sake of clearness. Acceptance of cattle and the rest among separated persons, when accomplished by each apart, is even the means of generating [sole] ownership: but among unseparated brethren, acceptance by one alone is the origin of the [joint] ownership of the others also. *The rules of gift,* written deeds, and the like. *Income,* entry [or accumulation] of principal and interest, or the

Other signs of partition enumerated.

CXXXII.

1—Ante Chap. 2d, Sect. 3d. Reports 1st, 105-211. Mit. page 377. Jim. Va. 237. Digest 3d, 407-417.

2—Or the *first,* as here transposed, evidently by the fault of the transcribers. The reading of the last text is different, the 'rules of Gift,' for 'diet.'

like. BRUHUSPUTI: [1] "They who have their income, expenditure, and "wealth distinct, and have mutual transactions of money lending, and traffick, "are undoubtedly separate." YANYUWULKYU: [2] "It is declared, that bre- "thren, husband and wife, father and son, cannot become sureties for each "other before partition; nor reciprocally lend, nor give evidence for each "other."

In default of any marks, ordeal permitted.

35. In default of all these signs of partition, ordeal [must be resorted to], since the very SAME AUTHOR has declared: [3] "In the absence of all "these, a divine test is prescribed." As for the text of VRIDDHU YANYU-WULKYU: "In doubts upon the subject of partition, the division must be "proved by the kinsmen, witnesses, and written deeds: proof by ordeal is "not to be:" it has reference to the existence of other signs.

CXXXIII.

A fresh partition to be made on failure of all attempts to discover the fact.

36. In case also of total failure in ascertaining whether they were separated or united, a fresh partition is enjoined by MUNOO: [4] "When there is "a doubt of partition among the coheirs, a partition must be again made, "even though they have taken separate places of abode." NARUDU states the duties of separated coheirs: [5] "When there are many persons, sprung "from one man, who have their [religious] *duties* [*dhurma*] apart, and "*transactions* [*kriya*] apart, and are separate in *the materials of work* "[*kurmu goonah*], if they be not accordant in affairs, should they give or "sell their own shares, they do all that as they please: for they are mas- "ters of their own wealth." *Duties*; ceremonials, that is, the five great sacrifices, [para. 31,] and the like. *Transactions*, commerce, and the like worldly acts. *The materials of work*, household necessaries, and the like, as the means of performing the acts [of the householder]. By the separate existence of these, a partition is manifested. The sense is, that they, so se-

Reports 1st 161.

1—Jim. Va. 288. Digest 3d, 427. 2—Digest 1st, 228. 3—Ante Chap. 1st, Sec. 2d, para. 1st.
4—Not found in the institutes. 5—Jim. Va. 333. and notes. Digest 3d, 430.

parated, may [each], even without the consent of the others, make the gift, sale, or other alienation [of their respective shares].

A Text of BRUHUSPUTI explained in two ways.

37. As for the text of BRUHUSPUTI:[1] "Separated heirs, as those who "are unseparated, are equal in respect of immovables; for one has not pow-"er over the whole, to give, mortgage, or sell it;" according to MUDUNU, it is for putting a stop to the right, among coheirs, even separated as to their shares of [moveable] effects, [though unseparated in other respects], to dispose, by gift or other mode, without [general] consent, of grain, or the like, the produce of undivided fields, or other [fixed property]. According to VINYANESHWURU and others, it is for the sake of obviating any future doubt, whether they be separated or united; for, by the consent of those unseparated, the facility of the transaction is ensured.

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Punishment for disputing an amicable division.

38. The SAME AUTHOR[2], with reference to one separated by his own wish, and afterwards disputing, says: "If he subsequently dispute a distri-"bution, which was made with his own consent, he shall be compelled by "the king to abide by his share, or be amerced if he persist in *contention*." *Contention*, pertinacious pursuit.

SECTION VIII.

ON OBSTRUCTED HERITAGE, OR SUCCESSION,—[*SUPRUTIBUNDHU DAYU.*]

Order of succession to one dying finally separated, without male issue.

1. Now, of the degrees of succession to obstructed heritage. YANYUWULKYU thus relates the order of succession to the wealth of one [dying] separated, and not re-united:[3] "*The wife* and *the daughters* also; both *parents*; "*brothers* likewise, and *their sons*; *gentiles*, *cognates*, a *pupil*, and a *fellow*

1—Mit. 257, Jim. Va. 81. The text is, in the first anonymous, and in the second, assigned to VYASU.
2—Digest 3d, 399. 3—Mit. 324. Jim. Va. 160. Digest 3d, 457. Reports 1st, 160-202—2d, 427-570. et al.

" *student:* on failure of the first among these, the next in order is indeed " heir to the estate of one, who departed for heaven leaving no male issue. " This rule extends to all [persons and] classes."

First, the Wife if faithful.

2. *The wife,* if faithful to her husband, takes his wealth; not if she be unfaithful; for its declared by Katyayunu: "Let the widow succeed to her " husband's wealth, provided she be chaste." So Hareetu says:[1] "If a " woman, becoming a widow in her youth, be headstrong, [suspected of " incontinence] a maintenance must in that case be given to her, for the " support of life." Prujaputi[2]: "Dying before her husband, a virtuous " wife partakes of his *consecrated fire;* or if her husband die [before her, " she shares] his wealth; this is a primeval law." *Consecrated fire,* all the [five sacred] fires. The same author says[3]: "Having taken his movable " and immovable property, *the base* and the precious *metals,* the liquids, and " the clothes,; let her duly offer his monthly, half yearly, and yearly, fune- " ral repasts; with presents offered to his manes, and by pious liberality, " let her honour the paternal uncle of her husband, his spiritual parents, " and daughter's sons, the children of his sisters, his maternal uncles, and " also ancient and unprotected persons, guests, and females [of the family]." *Base metals,* namely tin, lead, and the like.

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A Text of Bruhusputi as excepting fixed property, explained away.

3. As for this text of Bruhusputi[4]: "Whatever property a man poss- " esses, of every kind, after division, whether mortgaged, or other, that the " wife, [in whatever form married, *Jaya*] shall enjoy after the death of her " husband, with the exception of fixed property. Even if virtuous, and if " partition have been made, a woman is not fit to enjoy real property," it, according to the Smriti Chundrika, refers to a wife who has not [even] a daughter; for a woman having a daughter obtains the fixed property also.

1—See post para. 9, and references. 2—Bruhusputi Jim. Va. 158-9 Digest 3d, 458.

3—Our author varies the reading, omitting mention of grains, after metals, and reading "*Abdikum* yearly," for "*adikum,* other."

4—Reports 1st, 58—2d, 666.

MADHUVU again, considers it to relate to the prohibition of sale, or other transfer, of real property, by a widow, without concurrence of the heirs.

A Text of KATYAYUNU limiting the widow's power, prohibits only improper alienations.

4. As for this text of KATYAYUNU: "After the death of the husband, "the widow, preserving [the honor of] the family, shall obtain the share of "her husband, so long as she lives: but she has not property [therein, to "the extent of] gift, mortgage, or sale:" it is a prohibition of gift of money, or the like, to the *Bundee*, *Charun*, and the like [swindlers]. But gift for religious objects [not visible], and mortgage or the like, suitable to those objects, may even be made, since fixed and movable property are both noticed, in the above quoted text: "Having taken" &c. [para: 2d] and from this of KATYAYUNU himself: "A widow, actively engaged in meritorious observ-"ances and fasts, constant in the duties of her widowhood, intent upon "restraining [her passions], and making holy gifts, even if wanting a son, "shall reach the heavenly abodes."

Two other Texts referred to kept women.

5. Moreover, the text of the SAME AUTHOR:[1] "Heirless property goes "to the king, deducting however a subsistence for the *females*, as well as "the funeral charges: but the goods belonging to a venerable priest [*Shro-"triyu*] let him bestow on venerable priests": and further that of NARUDU:[2] "Except the wealth of a *Brahmunu* [property goes to the king on failure "of heirs]. A king, who is attentive to the obligations of duty, should "give something as a maintenance to the *women* of such persons. The law "of inheritance is thus declared": have both reference to *women* set apart,[3] because the term, 'lawful wife' [*Putni*], is not mentioned.

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And a third, to the widows of united or re-united persons.

6. But as for this of NARUDU:[4] "Among brothers, if any one die with-"out issue, or enter a religious order, let the rest of the brethren divide his "wealth, except the wife's separate property. Let them allow a maintenance "to his women for life, provided these preserve unsullied the bed of their

1—Mit. 334. 2—Mit. 335. Jim. Va. 177. Digest 3d, 540. 3—Ante Sec. 7th, para. 19.
4—Mit 236. Jim. Va. 177. Digest 3d, 474.

"lord. But if they behave otherwise, the brethren may resume that allow-"ance," it relates to the women of one dying unseparated, [or] reunited, because the reading [of the text] is upon that very subject, according to MUDUNU.

A Text of KATYAYUNU examined.

7. KATYAYUNU: "But if her husband have departed for heaven, the wife "obtains food and raiment: Or [*Too*], if *unseparated*, she will receive a "share of the wealth, so long as she lives." The term *unseparated* is also an illustration of a re-united family. The word 'but [*too*]' has here the sense of 'or.' From this results a double object of the text, according to MUDUNU: the last [hemistich] refering to a wife lawfully married; the first, to a woman set apart. The foundation of this exposition is to be considered. But [indeed] THE SAME author clearly explains the real meaning: "She who is intent upon "her service to *her* venerable *Gooroo*, is fit to enjoy the share assigned: "should she not perform her proper duty, he shall order her [only] clothes "[already] worn, and a morsel of food." *Her Gooroo*, her father in law, and other [venerable relatives]. At his pleasure, she may receive a share; otherwise, merely food and raiment. This is the meaning.

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8. THE SAME AUTHOR says: [1] "But a wife, who does malicious acts in"jurious to her husband, who has no sense of shame, who destroys his effects, "or who takes delight in being faithless to his bed, is held unworthy of sepa"rate property. [*Streedhunu*]." As for this text: "Let them follow *this very* "*same rule* also, with females degraded [by crime]: but clothes and grain "are to be given to her, and let her be caused to reside within the house," it has reference to a husband [living], says a certain modern compiler. *This very rule*, that is, regarding the divorce of a degraded [wife].

A widow suspected of incontinence gets only a maintenance.

9. Even a mere maintenance is for a woman suspected of incontinence, from this text of HAREETU: "If a woman, becoming a widow in her youth, "be *headstrong* [suspected of incontinence], a maintenance must in that case

1—Digest 3d, 565 See post Sec. 10th, para. 12.

"be given to her for the support of life." *Headstrong*, according to the MITAKSHURA [1], means 'suspected of incontinence.' This establishes our argument [The wife, if faithful, &c, para. 2d], that a lawfully married wife, restrained [in her conduct], takes the wealth. But if there be more than one, they will divide it, and take shares.

But a faithful one gets the estate. If more than one, they divide it.

10. In default of the wife, *the daughter* succeeds. Even as MUNOO says: [2] "The son of a man is even as himself, and the daughter is equal to the "son: how then can any other inherit his property, but a daughter, who is "as it were himself." If there be more daughters than one, they are to divide [the estate], and take [each a share.]

THE DAUGHTER, or daughters.

11. In a case also, where some of them are married, and some unmarried, the *unmarried* ones alone [succeed], by reason of this text of KATYAYUNU: [3] "Let the widow succeed to her husband's estate, provided she "be chaste; and in default of her, the daughter inherits, if *unmarried*."

Unmarried before married ones.

12. Among the married ones, when some are possessed of [other] wealth, and others are destitute of any, these [last] even will obtain [the estate], from this text of GOUTUMU: [4] "A *woman's* property goes to her daughters, un-"married, or *unprovided* for." *Unprovided*, destitute of wealth. Those acquainted with traditional law, hold, that the word, '*woman's*' [wife's] includes the father's also.

If married, the poorest of them.

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13. In default of daughters, the *daughter's son* [succeeds], by the text of VISHNOO [5]; "If a man leave neither son, nor son's son, nor [wife, nor fe-"male] issue, the *daughter's son* shall take his wealth. For in regard to the "obsequies of ancestors, daughter's sons are considered as son's sons."

THE DAUGHTER'S SON.

14. In default of the daughter's son, comes the *father*; in default of him, the *mother*: even as KATYAYUNU says: [6] "The widow, being a woman of

THE FATHER, and, after him only, THE MOTHER.

1—Cole Mit. page 340. Digest 3d, 479. Reports 2d, 457. 2—Chapter 9th, 130, Jim. Va. 184. Digest 3d, 166. Reports 1st, 81. 3—Mit. 326. 341. Ante para. 2.
4—Mit. 267-342-69. Jim. Va. 82 Digest 3d, 588. 5—Mit. 343. Jim. Va. 191. 6—Mit. 326.

" honest family, or the daughters, or on failure of them, the *father*, or *the* " *mother*, or the brother, or his sons, are pronounced to be the heirs of one " who leaves no male issue:" and likewise VISHNOO:[1] "The wealth of him " who leaves no male issue, goes to his wife; on failure of her, it devolves " on daughters; in default of daughters, it devolves on the daughters' sons; " if there be none, it belongs to *the father;* if he be dead, it appertains to " *the mother;* on failure of her, it goes to the brothers; after them it descends " to the brother's sons; if none exist, it goes to the relations [*Svkoolyu*]."

The doctrine of the MITAKSHURA disputed.

15. As for the opinion of VINYANESHWURU:[2] 'that in the complex term 'parents,' the omission of one term and retention of the other [*Ekusheshu*] ' constitutes an exception to the regular compound [*Dvundvu*], and although ' the order [of construction] be not certainly defined, yet the meaning [in ' favor of the mother's priority] may be understood, because the word 'mo- ' ther' stands first in the proper form of the compound; also, from the con- ' secutive order of the particular compound ['mother and father'] being the ' rule, of which the omission of one term and retention of the other ['parents'] ' is the exception, and since the father is a common parent to many sons, ' whilst the mother is not so; therefore, of the two, the mother in the first ' instance takes the estate, and on failure of her the father'[3], it must be set

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1—Mit. 326-350 note. Jim. Va. 160-194-196. Digest 3d, 489. The mention of 'daughter's sons,' is omitted in the Mit. and even in some copies of Jim. Va.; and our author leaves out the name of "kinsmen" before relations.

2—Mit. 343.

3—The remarks on this intricate and contested subject in the notes to the MITAKSHURA, page 345, are too valuable, and apposite to be omitted here. "The commentator [on the MITAKSHURA] BALUM BHUTTU, " is of opinion, that the father should inherit first, and afterwards the mother; upon the analogy of more " distant kindred, where the paternal line has invariably the preference, before the maternal kindred; " and upon the authority of several express passages of law. NUNDU PUNDITU, author of commentaries " on the MITAKSHURA, and on the institutes of VISHNOO, had before maintained the same opinion. But " the elder commentator of the MITAKSHURA, VISWESHWURU BHUTTU, has in this instance followed the " text of his author, in his own treatise entitled MUDUNU PARIJATU, and has supported VINYANESHWURU's " argument, both there and in his commentary named SOOBODHINI. Much diversity of opinion does " indeed prevail on this question. SHEEKURU maintains, that the father and mother inherit together: and " the great majority of writers of eminence [as UPURARKU and KUMULAKURU, and the authors of the " SMRITI CHUNDRIKA, MUDUNU RUTNU, *Vyuruharu Muyookhu*, &c.] gives the father the preference

aside, as contrary to those texts: for the word 'mother' being placed first, in the proper form of the compound, is an exception to the general rule, in regard to the option allowed for the omission of one term and retention of the other; and further, there is a want of proof, in fixing the proper order according to the diffusion or condensation [of the parental power].

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16 In default of the mother, the *uterine brother*; in default of him, *his son*. As for the declaration of VINYANESHWURU and others [1], 'that in default of 'the uterine brother, those by different mothers succeed; on failure of them, 'the sons of the uterine brother,' it is wrong: since the term 'brother' has the force of 'whole brother,' and a secondary quality is implied by the term, 'brother by another mother;' and hence an exposition in favor of both, is contrary [to reason]. SOME however say [2], upon the term 'brothers': 'That since: "Brothers and sisters, with sons and daughters," is one of the maxims [of PANINI], and the term 'brothers and sisters,' resolves into [the complex term] 'brothers,' by the omission of one term and retention of the other, in a compound of two species: therefore, in default of brothers, the sister [succeeds]': But it is not so, because there is a want of proof [of the correctness] of omitting one term, and retaining the other, in a compound of two species.

THE UTERINE BROTHER; then HIS SON. The doctrine of the MITAKSHURA, in favor of the half brethren, disputed.

17. The sons of a brother, also, if themselves fatherless at the time of the paternal uncle's death, provided they are capable of understanding [the use of] property, will divide the father's share with their father's other brothers, after the example: [3] "Among grandsons by different fathers, the allotment "of shares is according to the fathers."

The brother's sons share with the other brothers.

"before the mother. JIMOOTU VAHUNU and RUGHOONUNDUNU have adopted this doctrine. But "VACHESPUTI MISRU, on the contrary, concurs with the MITAKSHURA in placing the mother before the "father; being guided by an erroneous reading of the text of VISHNOO, as is remarked in the *Veermitroduyu*. The author of the latter work proposes to reconcile these contradictions by a personal "distinction: If the mother be individually more venerable than the father, she inherits; if she be less so, "the father takes the inheritance." In practice however, the question can never occur, unless the deceased had separated from his father, which is seldom if ever done.

1—Mit, 347. 2—Mit. 346 note. 3—Ante Section 4th, para 20th, See Mit 348. Reports 2d, 29.

THE GENTILE RELATIONS; of whom, the FATHER'S MOTHER is first, coming in this place, and not next to the mother

18. In default of brother's sons, succeed the *gentile relations*, [*Gotruja*] within the seventh degree, being connected by funeral oblations, [*supindu*]. The first among these is the paternal grandmother, from this text of MUNOO: [1] "The mother also being dead, the father's mother shall take the heritage, " [on failure of brothers and nephews.]" Even though she is [here] mentioned immediately next to the mother, still she is to be entered at the end, after the brother's sons, after the manner of the entry of [the *Shraddhu* for] incidental persons at the end, [as deceased acquaintances, &c.], because the placing her in the middle [is in violation] of the rank fixed for each, as far as brother's sons. [para. 1.]

Then THE SISTER,

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19. In default of her, comes the sister; under this text of MUNOO: [2] "To " the nearest *Supindu*, [male or female], after him in the third degree, the " inheritance next belongs:" and this of BRUHUSPUTI: [3] "Where many " claim the inheritance of a childless man, whether they be paternal or ma- " ternal relations, [*Sukoolya*], or more distant kinsmen [*Bandhuvu*], he who " is the nearest of them shall take the estate." And [the next rank is] her's, both from her being begotten under the brother's family name, and there being no further reservation with respect to the gentile relationship [*Gotrujutvu*]: it does not particularly specify *the same* gentile kindred. Neither is she mentioned in the text as the occasion of taking the wealth; [but as next of kin, she succeeds].

The FATHER'S FATHER, and the HALF BROTHER share between them; after them, the PATERNAL GREAT GRANDFA-

20. On failure of her, the paternal grandfather, and half brother are both to share and take it, their propinquity being equal, since the [deceased person's] own father was begotten by the former of those two, and was himself the begetter, of the latter, as well as of the deceased. The propinquity being similar, and there being a want of any other notice, however slight,

1—Chapter 9th, 217, Mit 326-346-49, Jim, Va. 194, Digest 3d, 503, Reports 1st, 198-202,

2—Chapter 9th, 187, Mit, 315-7-51, noticing our author. Jim. Va. 215-17. Digest 3d, 525. Reports 1st, 79-72,

3—Digest 3d, 532.

beyond the order of the Text, or the like, therefore, in other cases also, we must act even thus. For this reason, in default of these two, the paternal great grandfather, the father's brother, and the sons of the half brother, shall take and share it.

THER, THE FATHER'S BROTHER, and THE SONS OF THE HALF BROTHER, share alike.

21. All the *Supindas* and the *Sumanodukus* follow, in the order of propinquity, as enumerated by MUNOO:[1] "Now the relation of the *Supindas*, "[or men connected by the funeral cake], ceases with *the seventh* person, "[or in the sixth degree of ascent or descent,] and that of *Sumanodukus*, "or those connected by an equal oblation of water, ends only, when their "births and family names are no longer known." *The seventh*, must be understood as of him passed away.

THE SUPINDAS and SUMANODUKUS.

22. If no distant kinsmen [*Soduku*] exist, then come the *cognate kindred* [*Bundhoo*], who are thus specified in another SMRITI:[2] "The sons of his "own father's sister, the sons of his own mother's sister, and the sons of his "own mother's brother, must be considered as his *own* cognate kindred." "The sons of his father's paternal aunt, the sons of his father's maternal "aunt, and the sons of his father's maternal uncle, must be deemed his "*father's* cognate kindred." "The sons of his mother's paternal aunt, the "sons of his mother's maternal aunt, and the sons of his mother's maternal "uncles, must be reckoned his *mother's* cognate kindred." Here also, the order [of succession] is even the order of the text.

THE COGNATE KINDRED, of the deceased, of his father, and of his mother. CXLI.

23. If on the other hand [it be said]: 'As the right of the wife and all 'the others, in succession to the wealth, is derived from the deceased him-'self alone, even so, that of the cognate kindred is derived in like manner 'from him: What title then can the cognates of the father or of the mother '[of the deceased] have to the wealth? The term 'sons of the sister of the 'father's father,' and the like, is only for the sake of shewing the connexion

An argument against their equal right overruled.

1—Chap. 5th, 60. Jim. Va. 173-217. Reports 1st, 190-293. 2—Mit. 352. Digest 3d, 535. Reports 1st, 107-298.

' between the name and person, and does not mean a connexion with the ' wealth.' [I answer]: Even without that text, if, after the example of 'the father's maternal uncle, his paternal uncle,' and the rest, in like manner also, the continuous application of that term [cognate] among the father's and the mother's cognates be held to exist, by conjunction [of kin through some intermediate person], we should have the absurdity of rendering unintelligible the connexion between name and person. Hence, the text is intelligible, only by the acceptation of paternal and maternal cognates, in considering that subject in the rules of succession to property. The conclusion is, that the very same applies, by the declaration of the cognate affinity, in the rules for impurity and other [mutual obligations]. [1]

THE PRECEPTOR, PUPIL,

24. In default of cognate kindred, the preceptor; on failure of him, the *pupil;* by this text of APUSTUMBU [2]: " If there be no male issue, the " nearest kinsman inherits: or, in default of kindred, the preceptor; or, " failing him, the disciple."

AND FELLOW STUDENT, A SHROTRIYU,

25. In default of the pupil, the *fellow student* is the successor; in default of him, a *Shrotriyu;* from the text of GOUTUMU: [3] " Venerable priests " [*Shrotriyu*] should share the wealth of a *Brahmunu,* who leaves no issue."

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or any *Brahmunu,* if the deceased were a *Brahmun.*

26. In default of such an one, any other *Brahmunu,* by reason of this text of KATYAYUNU: [4] " But in default of all those, the lawful heirs are " such *Brahmuns,* as have read the three *Vedus,* as are pure [in body and " mind], as have subdued their passions. Thus virtue is not lost." And NARUDU says the same: [5] " In every case, the king may take the wealth " of a subject dying without an heir, except the estate of a *Brahmunu:* for " the property of a *Brahmunu* dying without an heir, must be given to " *Shrotriyus.*"

1—Sec. Mit. 252. note. where our author's doctrine is quoted. 2—3—Mit 353.

4—Munoo Chap. 9th, 188. Mit. 353. 5—Digest 3d, 538. where it is assigned to DEVULU.

27. BRUHUSPUTI:[1] "If *Kshutriyus*, *Vaishyus*, or *Shoodrus*, die child- "less, leaving neither wife nor brother, let the king take the property; for "he is indeed lord of all."

In all other cases, THE KING.

28. YANYUWULKYU[2] states a distinction with regard to the estates of asceticks, and the like: "The heirs of a hermit, of an ascetick, and of a "*student* [*Bruhmuchari*] are, in their order, the preceptor, the virtuous "pupil, and *the spiritual brother*, and *associate in holiness*." *The student*, a perpetual one, for the father and the rest even are [the natural heirs] of a temporary student. *The spiritual brother*, one who has agreed to bear the appellation of 'brother.' *An associate in holiness*, one appertaining to the same hermitage. 'Being a spiritual companion, and belonging to the same hermit- 'age' is a compound of nouns designating the same person,[3] [*Kurmmu-dharyu sumasu*]. According to VINYANESHWURU, [the succession] of preceptors and the rest, is in the inverse order. But MUDUNU prefers the direct order, from this text of VISHNOO:[4] "The spiritual preceptor shall take the "property of a deceased hermit."

The heirs of hermits, asceticks, and perpetual students specified.

29. The funeral rites of the deceased, as far as the tenth day's rites inclusive, must be performed by that person [among the heirs] who takes the estate, whoever it may be, [from the wife, downwards] even as far as the king himself. Even thus VISHNOO says:[5] "He who is heir to the estate, is the "giver of the funeral oblations." This same matter has been fully explained by me in the *Shraddhu Muyookhu*, in determining the order of those entitled to perform them.

Whoever takes the estate, as heir under this above order, is bound to perform the funeral rites of the deceased. CXLIII.

1—Jim. Va. 177. Digest 3d, 538. 2—Mit. 354 Jim. Va. 323 Digest 3d, 456.
3—See note to Dutt. Mim. page 102. 4—Digest 3d, 548
5—Digest 3d, 545. SMRITI.

SECTION IX.

OF REUNION AFTER PARTITION,—[*SUNSRISHTU.*]

Reunion after separation, defined.

1. Now we proceed to expound the doctrine of reunited coparceners. On this subject, BRUHUSPUTI defines reunion: [1] "He who, being once separated, dwells again, through affection, with his *father*, brother, or paternal uncle, is termed reunited." This reunion, according to the MITAKSHURA and others, can only take place with a father, brother, or paternal uncle, not with others, because no others are included in the text. But the proper sense is, that this [reunion] arises even from the joint location of the makers of the [first] partition. For the words *father*, and the rest, are merely as a part to denote the whole, of the persons who make the partition, after the example: "He measures the altar, half within, and half without:" otherwise, there would be a division of the text itself [into three]. Hence, reunion may take place with a wife, a paternal grandfather, a brother's grandson, a paternal uncle's son, and the rest also. "He who, being once separated [from the coheirs] dwells again [in common, is termed] reunited": from joint location [of such an one], the sense of separated brothers, [one's own] sons, and the like, does not result. [When two settle thus]: 'The present, or future, wealth of us two, is common property, until we make a partition a second time,' when there exists such a sign, either by an understanding or expressed wish, it is an union.

A restriction by the MITAKSHURA to three persons, overruled.

Re-union permitted, with any former coparcener.

But the shares at a second par-

2. In this place, MUNOO states a distinction: [2] "If brethren, once divided and living again together as parceners, make a second partition

1—Mit 357. Jim. Va. 228-168 Digest 3d, 512. Our author differs from all, in his doctrine

2—Chap. 9th. 210 Mit 359. Jim. Va. 227. Digest 3d, 476.

" *the shares must in that case be equal:* there is not in this instance any right " of primogeniture [*Jyeshtyum*]." Here, SOME say: 'that, the unequal distribution being set aside by the phrase, *the shares must in that case be equal,* the ' prohibition of the 'eldest son's right' is repeated [though contrary to rules ' of composition] for the sake of making it clearly understood, that although ' there is to be no inequality in making up the share of the eldest, yet in the ' distribution the shares may be even unequal, when made up of greater and ' lesser shares, at the time of reuniting the property.'

CXLIV. tition must be equal. Though the contributions were unequal.

3. But since the term, 'eldest son's right' [*Jyeshtyum*] and the like, is merely a declaration of the general meaning; therefore, if [the contributions to] the wealth were greater and less, still the share of each must be equal. And the same is the popular practice. Hence, as the foundation of the practice is derived from this text, any supposition of a declaration contrary thereto, is at variance with reason; for another author has said: "The body of the " law, like Grammar, furnishes, for the most part, the foundations of po- " pular customs."

Still the shares at a second partition must be alike.

4. BRUHUSPUTI: [1] " If any one of the reunited brethren acquire wealth " by science, valour, or the like [with the use of the joint stock], two shares " of it must be given to him, and the rest shall have each a share." According to MUDUNU, the meaning of the text is, that a double share being established for the acquirer, by the phrase, 'to the acquirer, two shares'; then, in a partition among [unseparated] brethren not reunited, he gets two shares, only in what he has acquired without detriment to the father's wealth [2]; but in a [fresh] partition among reunited brethren, he gets two shares of what was acquired by him, even if at the detriment of the reunited property.

In certain gains made even with aid from the common stock, the acquirer gets a double share.

5. YANYUWULKYU [3] enumerates the order of those entitled to succeed to

The order of succes-

1—Jim. Va. 165. Digest 3d, 551.

2—See Sec. 7th, para. 6.

3--Mit. 356. Jim. Va. 200. Digest 3d, 607. A literal, and connected version of this text, is required in this place, to understand clearly the succeeding argument: " Of the re-united [coheir], the re-united [coheir;] " so, of the uterine brother, the uterine brother: shall either give up, or shall retain the share," [giving " it up] if a son were born of him, or [retaining it] if he died [without one]."

sion to one dying after re-union, is an exception to that of obstructed heritage, [Sec, 8th.] CXLV.

the wealth of one reunited: " As of a reunited [coheir], the reunited " [coheir], so, of the uterine brother, the uterine brother," which is an exception to the regular succession [failing male issue], of " The wife, the daughters," and the rest. [1] Hence, this meaning results, that it is the reunited parcenership, and not the condition of the wife [the daughter], and the rest, which causes a preponderance of the right of inheriting the property of a reunited parcener.

The doctrine of the MITAKSHURA and others, against the wife &c,, controverted.

6. As for the doctrine of VINYANESHWURU, MUDUNU, and others, 'That 'this also refers to one devoid of son, grandson, or great grandson, both from 'the maxim 'that the subject forming an exception be of a nature similar to 'that [of the rule] which is rejected,' and from the want of connexion between the terms of the former text [2]: " Of one who departed for heaven " leaving no male issue," and the present one: therefore, even though there 'exist a wife, or other unreunited near heir, of such an one dying after reunion, still, the others alone who had reunited with him, will take his estate,' it must be considered. Since [in the second case], there is a want of proof, in the connexion, if the text is to be carried on even without that rule: nor [in the first case], is the complete similarity [of the rule and exception] to be looked for, in all cases of share, but only in a few points; [as may be instanced] from the nature of a 'deceased *Supinda*,' where, in default of connexion between the term, 'leaving no male issue,' and that of, 'one who departed for heaven,' they would not find the term, 'of one deceased.' Yet it cannot be so, for that very term is found in a text of MUNOO, to be presently adduced [para: 13]: " be deprived of his allotment at the distribution, or should any one of them die:" But if connexion [of the terms] be allowed, we should, in the case of sons, some reunited with the father, and some not reunited, or of grandsons so situated with sons, have them

1—2—Section 8th, para. 1st.

sharing equally, which is a contradiction: and in the case of one having male issue, this text does not apply. [1]

7. And here again, [such connexion] is at variance with that practice, the origin of which may be demonstrated to be in the general code of Law, [para. 3]. But [should it be said], 'though the text be inapplicable, in 'the case of one having male issue, in default of such connexion; yet if 'there be an assemblage of sons not re-united, with brothers re-united, or 'the like, then the brothers and others [re-united] would obtain the wealth, 'not the sons or others [not re-united],' it is not so; because in the last hemistich of the [above] text, it will be shewn to be unworthy of respect.

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8. The sense of the first quarter [of the whole text]: "Of a re-united "[coheir], the re-united [coheir]," has an exception in the second [quarter], "of the uterine brother," with which the other is connected. The meaning therefore is, that, in a case embracing both whole and half brothers, all re-united together, only the re-united whole brother will take the wealth of a re-united brother deceased. The last hemistich [2] is as follows: "Shall "give up the share, to [a son at any time] born; or shall retain it, if he "died [without issue]:" and the sense of it is this: 'If the pregnancy of 'the wife of a deceased re-united coheir, be unascertained at the time of 'dividing the [re-united] property, and a son be afterwards born, the paternal uncle or other re-united [parcener] shall give the share to that son; 'but on failure of him, he [the uncle, &c.] himself shall take it.'

One part of the text explained by the other, to define the rights of whole with half brothers, and those of a posthumous son with his uncles.

9. Here, the filial relation alone affords the right of taking the father's share; not the fact of production posterior to the partition, since this cannot cause such a result: besides, it creates [unnecessary] prolixity [to specify 'subsequently' born], and [thirdly], would have the absurdity of denying the [known] right to a share, in the case of a son produced in another part of

THE SON, though not reunited, succeeds, in preference even to the reunited uncle.

1—In some of the copies, this sentence is not to be found in this place.

2—Of the text with which para. 5, commenced. Mit. 367. Jun. Va. 200.

the country previous to partition, but unknown [at the time]. Therefore, to the son previously born even, though not re-united, the uncle, or other [parcener] though re-united, shall give his share.[1]

The rights of the whole and half brother severally discussed.

10. The SAME AUTHOR[2] propounds the right, of an uterine brother not re-united, and a half brother re-united, in taking shares of the wealth: "*One of a different womb*, being again associated, may take the succession; "not one of a different womb, *if not re-united:* but [a whole brother, *if*] "*re-united*, obtains the property; and not [*exclusively*] the *son of a different* "*mother*." Here, from the terms, *one of a different womb; son of a different mother*, the half brother alone is not designated, but the paternal uncle, and others likewise, because there is nothing to distinguish such association: for, if otherwise, we should have the absurdity of rendering senseless the union with uncles, and the rest, already established [by the text at para. 1.] And there is a want of any other acts suitable to a state of re-union.

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11. *If not re-united;* this term applies to those both preceding and following it, as a lamp upon a threshhold [gives light both within and without]. So, the word *re-united*, by varying the application of it, is to be understood of the whole brother, as entitled by union, both of the wealth and also of the womb. The word *if*, occurring in the former phrase, is to be understood immediately after this, as well as at the end of the text. The word *exclusively* [even, *evu*] should be supplied.

Exposition of the text.

12. The following are the meanings of the terms of this text: 'One of a different womb,' that is, one of a separate womb; [such], the wife, the father, the father's father, the half brother, the paternal uncle, and others, if they be re-united, may take the wealth. If not reunited, those of a different womb do not [succeed]. Hence, by reason of the rule respecting fitness and

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1—This seems likewise to be the doctrine of the SOOBODHINI. Cole, Mit, 358, note.

2—YANYUWULKYU Mit. 358. Jim. Va. 201. Of the readings mentioned there, our author adopts. 'Nanyodurye 'dhunum haret, and Sunsrishto nanyumatrujuh.' The translation of some of the terms is here altered, to suit the gloss.

dissimilitude, [1] the reunion of one of a different womb, is declared as the reason for his taking the wealth. A whole brother, termed 'reunited,' [by union of the womb], even if not reunited [by union of the wealth], will take the property. By this reasoning, the community of womb alone even, is declared a sufficient reason: So, one reunited, as possessing union of wealth; but if only born of a different mother, he will not take any thing whatever.

Therefore the whole, and half brother, or any other reunited persons, share it equally.

13. From the above this results, that, the one from his reunion, the other from his community of womb, both jointly share and take it [between them]. MUNOO [2] specially determines this very principle, in the right of succession among reunited persons: "Should the eldest, or youngest, of several brothers, *be deprived of* his allotment at the distribution, or should any one of them die, his share shall not be lost: but the *uterine brothers* and sisters, *and such as were reunited* after a separation, shall assemble together and divide his share equally." *Be deprived of*, by entering another order, by degradation from sin, or the like. *Uterine*, must be joined with *brothers*, in construction. *And such as were reunited*, that is, the wife, the father, the paternal grandfather, the half brother, the paternal uncle, and the rest. [para. 1].

CXLVIII.

Fixed property, the uterine brother takes; concealed wealth and animals, he shares with those reunited.

14. On this point, PRUJAPUTI states a distinction: "Whatever *concealed wealth* is brought to light, becomes the property of the reunited parceners: but *lands* and houses, those not reunited shall entirely take, according to their shares." *Concealed wealth*, what is capable of being hidden, by depositing in the ground, or otherwise, as gold, silver, or the like. Such, those *reunited*, that is, of a different womb, shall take; but landed

1—Cole. Digest 1st. 9 note. "In Logick, *Unwuyu*, and *Vyutireku*; the first is the relation of events, of which whenever one occurs, the other also occurs; the second is the connexion of circumstances, of which when one occurs not, the other also does not occur."

2—Chapter 9th, 211-12. Mit. 159. Jim. Va. 210. Digest 3rd, 475.

property, the uterine brother [takes]. Kine, horses, and other [animals], the uterine and he of a different womb [shall share]. According to MUDUNU, he of a different womb alone, if reunited, will take the houses, horses, and the like; but it is not so noted in the text.

A case in the SMRITI CHUNDRIKA explained as between uterine brothers.

15. According to the SMRITI CHUNDRIKA: 'But if there exist only one 'species of property, out of the [above sources, as] concealed wealth, land, 'kine, and the rest, the uterine brother alone, even not reunited, takes it.' The proof of this must be considered. Among uterine brothers, if some of them are reunited, but other brothers not, nevertheless, those reunited alone will take the wealth, because community of womb, and reunion, exist as a double cause [of succession]. Even so GOUTUMU: "When a reunited [parcener] "dies, his reunited coheir shares his estate." and BRUHUSPUTI: "Two bro- "thers, who become reunited through affection, [after being separated] "share mutually."

CXLIX.

THE SON, succeeds in all cases,

Those reunited, before others not reunited.

16. Here, this is the refined sense: 'A son, whether reunited with his 'father, or not reunited, shall obtain the entire paternal share, since the power 'of intercepting the right to take a share, lies in the filial relation. Among '[several] sons also, when one is reunited, and the other is not, the reunited 'one alone [succeeds], by the text [para. 5th]: "Of a reunited [coheir,] the "reunited [coheir]."

And the son of one reunited, succeeds before other reunited persons.

17. In a case of reunion, between a father, son, and any other, not being his son, the son alone [succeeds], because the same has already been declared [para. 8th], by the terms: "shall either give up, or shall "retain, &c."

In other cases, THE PARENTS; and first of them THE MOTHER.

18. In an assemblage of father, brothers, paternal uncles, and others, not being sons, reunited, the parents alone [take it]. Of them again, the mother is first, and then the father, according to MUDUNU.

19. But [after them] the brother, paternal uncle, and the rest, shall even take and share it [equally]: for among them all, the state of union exists, as the cause whence their right of taking [shares] is derived.

Then THE BROTHER, PATERNAL UNCLE, &c., equally.

20. So likewise, in an assemblage of unreunited brothers, reunited paternal uncles, half brothers, and others, they even share it [in common], by reason of the two phrases [the one, para 10]: "If not reunited; but [a whole "brother, if] reunited, obtains the property: and not [exclusively], the son "of a different mother:" (the other, para 5): "As of a reunited [coheir] "the reunited [coheir], so of the uterine brother, the uterine brother."

The brothers not reunited share with reunited uncles, &c.

21. In case of the reunion of the wife alone, she alone takes it, from the same text; "of a reunited [coheir] the reunited [coheir]."

THE WIFE, if alone reunited.

22. In an assemblage of the other persons, reunited together with her also reunited, they alone [succeed]; she does not. Moreover, in commencing the topic of reunion, both SHUNKHU and NARUDU have declared [1]: "*Among "brothers*, if any one die without issue, or enter a religious order, let the "rest of the brethren divide his wealth, except the wife's separate property. "Let them allow a maintenance to his women for life, provided these pre-"serve unsullied the bed of their lord; but if they behave otherwise the "brethren may resume that allowance." "The maintenance of the daughter "of such an one, is enjoined, to be made out of her father's share: if still "uninitiated, she will take a share [for the purpose]; if [he died] after that, "her husband shall support her."

If others were reunited she does not succeed, but must be maintained.

CL.

As must the daughter, who gets also a share, if uninitiated.

23. And here, like as no necessity exists for gifts in honor of the deceased at the *Ubhyooduyeshtee* sacrifice, because there can be no doubt of the existence of materials for it, [2] even so, the term, *among brothers*, is not [necessarily] required, since from the very commencement, there is a certainty of the

Argument to prove that the text is not confined to a case of brothers only.

1—Mit. 326. Jim. Va. 177. Digest 3d, 474. Reports 2d, 129. Ante section 8th, para. 6th.

2—This passage, from the *Vedus*, is left imperfect, the *Shastrees* professing not to understand it themselves.

agency of reunited persons, in the shares, or like [succession], by death, or entry into a religious order.

Among unreunited persons, succeeding to one reunited with other members of the family, THE MOTHER is first, then THE FATHER the ELDEST WIFE.

24. As for what SHUNKHU,[1] in proceeding to expound reunion, says: "Of those also, departed for heaven without male issue, the property goes "to the brothers: In default of them, both parents will take it, or *the eldest* "wife," it, according to MUDUNU, is intended to fix the order of the unreunited brothers, and the others, upon the death of one dying reunited, subsequent to the death of his paternal uncle, brother's son, or half brother, with whom he had previously made a reunion. And, according to THE SAME authority, in this case also, first is the mother, and next the father [para 18]. *The eldest*, that is, she who [best] preserves her duty.

The SISTER, and DAUGHTER; after them the nearest *Supinda*.

25. In default of a wife, the sister; according as BRUHUSPUTI says[2]: "His "*sister* also, is entitled to take a share of it. This law concerns one who "leaves no issue, nor wife, nor parent." Some read, his *daughter*. In default [therefore] both of daughter and sister, the nearest *supinda* succeeds.

SECTION X.

OF A WOMAN'S PECULIAR PROPERTY,—[*STREE DHUNU*].

The sources of a woman's property are six. CLI.

1. MUNOO[3]: "What was given *before the nuptial fire* [*Udhyuguni*] "what was presented *in the bridal procession* [*Udhyavuhuniku*] what was "given *in token of love* [*Preeti duttu*] and what was received by her from "her brother, her mother, or her father, are denominated the *six-fold* pro- "perty of a woman."

and not less; but may be more.

2. *Six-fold*, is here used in order to prevent [its reduction to] a smaller number, a [position] which is borne out by the word *other* in the following

1—Mit. 327-339. Jim. Va. 163. Digest 3d, 473. 2—Jim. Va. 164. Digest 3d, 476.
3—Chapter 9th, 194. Mit. 300-365. Jim. Va. 70. Digest 3d, 567.

text of YANYUWULKYU [1]: " What was given to a woman by the father, the " mother, the husband or a brother; or received by her *at the nuptial fire* " [*Udhyugunt*], or presented on her *supersession* [*Adhivedunikhu*], as also " any other [separate acquisition], is denominated a woman's property." VISHNOO [2] likewise specifies more [than those six]: " What has been given " to a woman by her father, her mother, her son, or her brother; what has " been received by her *before the nuptial fire*, [*Udhyugnoopagutu*], what " has been presented to her on her husband's *espousal of another wife* " [*Adhivedunikhu*], what has been given to her by kindred, as well as " her *perquisite* [*Shoolku*], and a *gift subsequent* [*Unvadheyuku*], are a " woman's separate property."

Others specified.

3. In explanation of property *given before the nuptial fire* [*Udhyuguni*] and the other kinds, KATYAYUNU [3] says: " What is given to women at the " time of their marriage, near the nuptial fire, is celebrated by the wise as " woman's property bestowed *before the nuptial fire* [*Udhyugunikhu*]." " That " again, which a woman receives whilst she is conducted from her father's " house [to her husband's dwelling] is instanced as the property of a woman, " under the name of *gift presented in the bridal procession* [*Udhyavuhunikhu*]." " What has been given to her through affection by her mother-in-law, or by " her father-in-law; or has been offered to her as a token of respect, is deno- " minated an *affectionate present* [*Preeti duttu* [4]]." " What has been received " by a woman at a time subsequent to her marriage, from the family of " her husband, is called a *Gift subsequent* [*Unvadheyuku*], and so is that " which has been similarly received from her own family" [5.–6]: " Whatever

Each gift defined: 1st, before the nuptial fire.

2d. In the bridal procession.

3d, through affection.

4th, gift subsequent.

5th. The perquisite.

1—Mit. 364. Jim. Va. 73 Digest 3d, 553. 2—Jim. Va. 68 Digest 3d, 562. where for son, is read 'friend.'
3—Mit 336. Jim Va. 70 Digest 3d, 558. Reports 1st. 64. 4—Mit 366. note.
5—Mit 367. Jim. Va. 69. and note. The MUYOOKHU follows the reading of the RUTNAKURU, " *Srukoolat tutha.*"
6—Digest 3d, 563. Jim. Va. 92 and note. The reading of the Digest, as far as it agrees with the gloss of our author, is retained.

"is received by a woman as the value of household utensils, of beasts of "burden, of milch cattle, or ornaments of dress, or for works, is called her "*perquisite* [*Shoolku*]." The meaning is, when the bride does not [as usual] obtain household utensils and the rest, then, whatever is given to her at the time of her marriage as the price of them, is termed her *perquisite*. What she receives on her *supersession* [*Adhivedunika*] is explained by YAGNYUWULKYU[1]: "To a woman, whose husband marries a second wife, let him "give an equal sum [as a compensation] for the *supersession*, provided no "separate property have been bestowed on her: but if any have been "assigned, let him allot *half*." *Half*, here means only so much as will [when added to her own property, make it] equal to the [prescribed] amount of supersession.

6th. For supersession.

Promise of dower is a debt.

4. DEVULU: "That which a husband has *promised* for separate proper"ty [*stree dhunu*] must be made good by his sons, even as a debt." *Promised*, to his wife [*striyai*].

Nature and amount of a woman's separate property.

5. On the subject of giving property to women, KATYAYUNU further declares: "Separate property, excepting immovables, is to be given to women "by their father, mother, husband, brother, and kindred, according to their "means, as far as *two thousand*." The wealth to be given excludes immovable property, and must not exceed two thousand *punus*, according to MUDUNU. So VYASU:[2] "A present, amounting to two thousand [*punus*] "at the most, may be given to a woman, out of the wealth." And this sum, of *two thousand* [*punus*] at the outside, is to be given every year, so that in a period of many years, more would by this [means be given]. If they are able, even immoveable property may be given, according to the same, [MUDUNU].

1—Mit 378. and note. Jim. Va. 63. Digest 3d, 17. The MUDDUNU agrees with the MITAKSHURA.
2—See Chap. 22nd, for the value of the punu. Of the various readings of this text noticed in Jim. Va. 72., our author adopts: "*Drusahusruh puro dayuh.*" Digest 3d, 583.

6. But, in property given to a woman with a view of cheating the heirs out of it, as well as ornaments or the like, given to her merely for the purpose of wearing, a woman has no ownership [or property]; for thus says KATYAYUNU: "But whatever has been given to women with a fraudulent design, "as well as entrusted to them for use, by their father, brother, or their husband, is declared not to be women's property, [*Stree dhunu*]."

Property fraudulently given or things lent for use not included.

7. In what they have earned by the arts, or obtained from friends or those distinct from parents or the rest, women have no property; for thus says the SAME AUTHOR[1]: "The wealth, which is earned by mechanical arts, or "which is received through affection from any other [but the kindred], is "always subject to her husband's dominion. The rest is pronounced to "be the woman's property." However, though a text[2] says: "A wife, a "son, and a slave, are [in general] incapable of property [*Nirdhunu*], "the wealth which they may earn, is [regularly] acquired for the man to whom "they belong:" it also relates [only] to wealth earned by mechanical arts and the like. It is moreover agreeable to reason, to refer this also to their not having absolute dominion in wealth received on their supersession [*Adhivedunika*] and the rest.

CLIII. Women, have no absolute property in their earnings; or in any but the first six kinds.

8. Again, though MUNOO says[3]: "A woman should never make "*expenditure* from the goods of her kindred [which are] common to [her "and] many; or even from the property of her lord without his assent." (*Expenditure*, is disbursement,) yet, in some kinds of wealth, they are declared to possess sole property, by KATYAYUNU[4]: "That which is received by a "married woman, or with a maiden, in the house of her husband, or of her "father, from her brother or from her parents, is termed the gift of affectio-"nate kindred [*Soudayukum*]. The independence of women, who have

In some kinds, they possess absolute property.

1—Jim. Vu. 75. Digest 3d, 566. 2—Of Munoo Chap. 8-416. Cole. on oblig. p. 252. Digest 2d, 190-249.
3—Chap. 9-199. 4—Mit. 366. Cole. on oblig. p. 26-28 Jim. Vu. 75. Digest 3d, 573. Reports 1st, 61.
Of the readings [illegible] "Kahjiya [illegible]"; [illegible] the MITAKSHURA [illegible]. See Section VII, part. 10.

" received such gifts, is recognised in regard to that property, for it was " given by their kindred to soothe them, and for their maintenance." " The " power of women over the gifts of their affectionate kindred is ever cele- " brated, both in respect of donation and of sale, according to their plea- " sure, even in the case of immovables."

but not in immovable property given by the husband.

9. But over immoveable property given them by their husbands, they do not possess full power, from this text of NARUDU [1]: " What has been " given by an affectionate husband to his wife, she may consume as she " pleases, when he is dead, or may give it away, excepting immovable " property."

CLIV.

Husbands and others do not possess absolute power, over women's property.

10. The non existence of absolute power, in husbands and the rest, over women's property, is declared by the SAME AUTHOR [2]: " Neither the hus- " band, nor the son, nor the father, nor the brothers, can assume the power " over a woman's property, to take it or bestow it: If any of these persons " by force consume the woman's property, he shall be compelled to make it " good with interest, and shall also incur a fine. If such person, having " obtained her consent, use the property amicably, he shall be required to " pay the principal when he becomes rich." MUNOO [3]: " Such kinsmen, as " [by any pretence] appropriate the fortunes of women during their lives, a " just king must punish with the severity due to thieves" [4]: " Such orna- " mental apparel, as women *wear* during the life of their husbands, the heirs " of the husband shall not divide among themselves: they who do so, are " degraded from their tribe." *Wear*, meaning, things worn by them, which have been given to them for the purpose by their husbands or the others. DEVULU [5]: " Her *maintenance*, ornaments, perquisite, and *gain*, are the

1--Cole. on oblig. 28-233. Digest 3d, 575. Jim. Va. p. 76. Mit. p. 254., where it is attributed to VISHNOO.
2--Jim. Va. 77. Digest 3d, 574., where it is attributed to KATYAYUNU.
3--Chapter 8th, 29.
4--Chapter 9th, 200. Mit. 375-273. Digest 3d, 571. Reports 2d, 407.
5--Jim. Va. 74, and the note there. Cole. on oblig. 232. Digest 3d, 577. At the present day, where the woman's Dower is high, it is put out at interest, which is the meaning given to GAIN, by Jim. Va. and his commentators.

" separate property of a woman; she herself exclusively enjoys it, and her " husband has no right to it unless in distress"[1]: " If he *let it go* on a " false consideration, or consume it, he must repay the value to the woman " with interest; but he may use the property of his wife, to relieve a distres-" sed *son*" *Maintenance*, wealth given her by her father, or the others, for the purpose of subsistence. *Gain*, interest [or profit]. *To let go*, get rid of, and give away, have all the same meaning in this place. The word *son* is here used in its general sense, for [any member of] the family. YANYUWULKYU[2]: " A *husband* is not liable to make good the property of his wife, " taken by him in a *famine*, or for the performance of some *religious duty*, " or during illness, or while *under restraint*." Here, by using the word *husband* alone, it is virtually declared, that woman's private property must not be taken by any other but him, even when distressed by a *famine* or other calamity. *Religious duties*, such as are indispensible. *Under restraint*, in prison.

Though a husband [but none else] may take it under certain circumstances.

CLV.

without being compelled to restore it.

11. In some cases a husband, though unwilling, may be forced to restore it; for, says DEVULU[3]: " But if the husband have a second wife, and do not " shew honor to his first wife, he shall be compelled by force to restore her " property, though amicably lent to him. If suitable food, raiment, and " dwelling, be withheld from the woman, she may exact her own [property,] " and take a share [of the estate] *with* the coheirs." That is, *at their hands*.

A husband in some cases may be compelled, to restore it.

12. This however, relates to a virtuous wife, for a wicked one should receive no portion; and accordingly, the SAME AUTHOR says[4]: " But a " wife, who does malicious acts injurious to her husband, who acts impro-" perly, who destroys his effects, or who takes delight in being faithless to " his bed, is held unworthy of separate property." And again[5]: " Wealth

A wicked wife gets no separate property or portion.

1—Digest 3d, 477. 2—Cole. Mit. 374. Jim. Va. 77. Cole on oblig. 238. Digest 3d, 578. q v. Reports 1st, 371.
3—Jim. Va. 77. Digest 3d, 581., but by both it is attributed to KATYAYUNU, and joined to the foregoing texts of that author. 4—Digest 3d, 585. Ante Sec. 8th, para 8th, but the reading there is somewhat different. 5—Mit. 329. Digest 3d, 586.

" was conferred for the purpose of defraying sacrifices; therefore distribute " wealth among honest persons, not among women, ignorant men, or such " as neglect their duties."

The successors to a woman's property are her children.

13. The right of succession after a woman's decease, to that [part of her] private property which is entitled a gift subsequent, [*Unvadheyu*] is thus settled by MUNOO: [1] " What she received after marriage [*Unvadheyu*] from " the family of her husband, and what her lord may have given her through " affection [*Preetenu*] shall be inherited, even if she die in his life time, by " her *children* [*Pruja*]." The term *children* is thus explained by the SAME AUTHOR [2]: " On the death of the mother, let all the uterine brothers, and " the uterine sisters, equally *divide the maternal estate*."

CLVI.

Argument against the reciprocal rights, of the sons and the daughters.

14. When, from non-existence of daughters and the rest, the right of inheritance devolves even to the sons, from their connexion, then it becomes reciprocal. When this right is taken up by unmarried daughters, then [the son's succession arising from] that connexion, is at end: but, according to the MITAKSHURA [3], 'it is not declared that the succession pertains [equally or] reciprocally to the brothers and unmarried sisters,' Yet, it has been said by others: ' It is declared, that there is no original connexion of sons ' and daughters, in property received by their mother after marriage [*Unva- ' dheyu*], or given by her husband through affection [*Preeti duttu*].'

Among daughters, the unmarried are first, sharing with sons.

15. The distinctions in succession among daughters, are pointed out by MUNOO [4]: " *A woman's property* goes to her children, and the daughter *is* " *a sharer* with them, provided she be *not given away;* but if married, she " receives *a mere token of respect.*" *Is a sharer*, shares equally with the sons. *Not given away*, unmarried. It means, that if there be one [unmarried],

1—Chap. 9th, 195. 2—Chap. 9th, 192. Mit 370. Jim. Va. 78. Digest 3d, 587. 3—Page 371. not quite in the words of our author. 4—It is not a text of MUNOO, but of BRUHUSPUTI, quoted by KOOLLOOKU in his gloss on the above text of MUNOO, and likewise in Jim. Va. 78. and Digest 3d, 588. Of the readings noticed, our author follows that of "*lubhute manu matrukum*," and himself, in para. 25. refers it to BRUHUSPUTI.

then the married [daughter] receives *a mere token of respect*, that is, only something very small. If there be no unmarried daughter, the share of the married daughter is equal to that of the brothers, according to the text of KATYAYUNU:[1] "Married sisters shall share with [brothers or] kinsmen."

If none unmarried, the married ones share with sons.

16. Some trifle also must be given to the daughters of those daughters, according to the text of MUNOO[2]: "Even to the daughters of those daugh-"ters something should be given, as may be fit, from the assets of their "maternal grandmother, on the score of natural affection."

The daughter's daughters get something.

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17. But all acquired by marriage [*Youtuku*] goes to the unmarried daughter alone, not to the son. So a prior text of THE SAME[3]: "*Pro-"perty given* to the mother *on her marriage* [*Youtuku*] is inherited by her "[unmarried] daughter." *Property given, on her marriage*, whatever is received by her at the time of marriage or other [ceremony] whilst seated together with her husband; for, according to MUDUNU: 'The word *Youtuku*, 'is, in the NIGHUNTOO, derived from their being then joined together [*Yootu*].'

all property acquired by marriage, the daughter, and not the son takes.

18. In respect to woman's property, before enumerated in the texts of other sages, distinct from that acquired subsequent to marriage [*Unvadheyu*] or through their husband's affection [*Preeti duttu*], these distinctions are declared by GOUTUMU:[4] "*A woman's property* goes to her daughters, un-"married or *unprovided*." *Unprovided*, such as are destitute of wealth.

All the property, except two kinds, goes to daughters, unmarried or unprovided.

19. The daughter by a *Brahmuni* wife, however, shall take the wealth of her step mother; thus MUNOO[5]: "The wealth of a woman, which has "been in any manner given to her by her father, let the *Brahmuni* damsel "take; *or*, let it belong to her offspring." By giving the particle *or* the sense of '*and*,' we have it, 'and shall be shared by [her issue].' Some say, that the word *Brahmuni* is used to denote any girl of equal or superior cast, but the proof of this must be well examined.

A distinction when wives of different class exist.

1—Digest 3d, 594. 2—Chap. 9th, 193. Mit. 370. Digest 3d, 600. 3—Chap. 9th, 131 Jim. Va. 82 and notes. 4—Ante, Sec. 8th, para. 12. Reports 2d, 418. 5—Chap. 9th, 198. Mit. 372. Jim. Va. 83.

In default of daughters, their issue succeeds.

20. If there be no daughters, then the issue of those daughters succeeds, according to the text of NARUDU[1]: "Let daughters divide their mother's "wealth; or, on failure of daughters, *their* male issue [*tud unvuyu*]."

Distribution among daughters, and among their sons, is according the mothers.

21. A distribution among daughters by different mothers, as well as among the different daughter's sons, to be just, must be apportioned after the example of that prescribed for the sons of different fathers, where the partition is according to their father's shares [not to the number of the sons of each father].[2]

The issue of the daughters succeeds on their default. CLVIII,

22. However, YANYUWULKYU says:[3] "The daughters share *the residue* "of their mother's property, *after payment of her debts*, and the *issue* succeeds "in their default." And here again, some say, the word *issue* [*Unvuyu*], has reference to the offspring of the daughters; whilst others hold, that if she leave no daughter, even her sons may take it, since the word *tud*[4] in the text of NARUDU above, distinctly points out the mother alone; and this [first] doctrine agrees with custom. *The residue after payment of her debts*; on this subject those acquainted with the ancient law have declared, that the sons alone must take the property, [if only] equal to, or less than, the amount of debt.

Sons take the property, if the debts are equal to it, or more.

On failure of daughters and their issue, sons, and their issue.

23. If daughters or the rest do not exist, the sons, grandsons, and the rest must take it, for thus it is declared by KATYAYUNU[5]: "But on failure "of daughters, the inheritance belongs to the son."

The right of the daughters and their issue, confined to the six kinds of property.

24. This right of inheritance, of daughters and the rest, in the mother's property, exists only in wealth given before the nuptial fire [*Udhyuguni*], and in the bridal procession, [*Udhyavuhuniku*], and the other [kinds] above recorded in the texts [paras. 1—2—3.] specifying woman's property; for, if

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1—Mit 270 and note. Jim. Va. 82. In the former, it is translated "their male issue," in the latter, "her male "issue," our author prefers the former See para. 28. 2—See Section 4th, para. 20.

3—Mit 266-7-268. Jim. Va. 82. 4—Our compilers read *tuda*, following the modern Benares copy but it is evidently wrong, the whole argument running on the word *tud* as a pronoun.

5—Jim, Va, 82, Digest 2d, 591,

relating to all wealth in which their mother has any property, it would go to set aside those texts [limiting it to six].

The term 'woman's property' confined to the preceding texts.

25. From this we must understand, that the often repeated term '*woman's property*,' which BRUHUSPUTI, GOUTUMU, and the rest, have adopted; for example: "*A woman's property* goes to her children:" [para. 15], "*A woman's property* goes to her daughters" [para. 18], and the like, relates even to the texts above delivered. As many again as, even without actually keeping the phrase 'woman's property,' have parallel expressions, such as, "*divide the maternal estate*" [MUNOO, para. 13], or the like, all those in like manner have reference to the same texts, by a combination of objects having the same origin.

Woman's property is an exception, to the general right of sons.

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26. However, the text of YANYUWULKYU:[1] "Let sons divide equally "both the effects and the debts, after [the demise of] their two parents:" relates to [what is] acquired by the act of partition and the like, with the exception of that declared in the above texts [as woman's property]. From this it is clear, that, if there be daughters, the sons or other heirs even succeed to the mother's estate, distinct from that part before described [as woman's property].

On default of offspring, the kinsmen succeed.

27. Again, if there be no offspring of either sex, the further [succession] is declared by YANYUWULKYU,[2] referring to the above mentioned woman's property: "Her kinsmen [*Bandhuva*] take it, if she die without issue."

Their right depends on the particular form by which the woman was married.

28. THE SAME AUTHOR expounds the succession of kindred [*Bandhuvu*] to be according to the different kinds of marriage[3]: "The property of a "childless woman married in the form denominated *Brahmu, or in any of* "*the other four* [unblamed modes of marriage], goes to her husband: but if

1—Mit 263. Jim. Va. 55. The last hemistich of this text was quoted above, para. 22. See Section 4th, para, 17.

2—Mit 267. Jim. Va. 91. Digest 3d, 613.

3—Mit 268. Jim. Va. 86. Digest 3d, 606. These rites are explained, Digest 3d, 604.

" she leave progeny, it will go to her daughters; and in other forms of mar-" riage [as the *Asooru* &c.] it goes to her father, [and mother, on failure of " her own issue]." [In the one case], if there be no husband, then the nearest to her in his [*tut*] own family takes it; and [in the other case], if her father do not exist, the nearest to her in [her] father's family succeeds, [for the law that]: "To the nearest *supindu*, the inheritance next belongs," as declared by Munoo [1] denotes, that the right of inheriting her wealth, is derived even from nearness of kin to the deceased [female] under discussion—And, though the Mitakshura [2] holds, 'that on failure of the husband, 'it goes to his *tut* nearest kinsmen [*supindu*] allied by funeral oblations;' and, 'on failure of the father, then to his [*tut*] nearest *supindas*;' yet, from the context it may be demonstrated, that *her* nearest relations are his nearest relations; and [the pronoun *tut* being used in the common gender], it allows of our expounding the passage 'those nearest to him, through her, in his own family:' for the expressions are of similar import.

The effect of these rites is different in CLX. the different classes.

29. *In the Brahmu or in any of the other four*, relates to the *Brahminical* class, on account of these [rites] being the only ones lawful in respect to them. But as the *Gandhurvu* rite is also lawful to the *Kshutriyu* class and the rest, so also, the wealth of her who has been married according to that form devolves to her husband alone. And so Munoo [3]: " It is ordain-" ed, that the property of a woman, married by the ceremonies called " *Brahmu*, *Daivu*, *Arshu*, *Gandhurvu*, or *Prajaputyu*, shall go to her hus-" band, if she die without issue." " But her wealth, given on the marriage " called *Asooru*, or on either of the two others [*Paishachu* and *Rakshusu*] is " ordained, on her death without issue, to become the property of her " mother and her father."

1—Chap. 9th, 187. Mit 347. Jim. Va. 217. Ante Section 8th, para, 19,

2—Page 368. The correctness of this version is doubtful.

3—Chapter 9th, 196-7 Jim. Va. 87. Digest 3d, 607-8,

30. On failure of the husband of a deceased woman, if married according to the *Brahmu* or other [four] forms; or of her parents, if married according to the *Asooru* or other two forms, the heirs to the *woman's property*, as expounded above, are thus pointed out by BRUHUSPUTI:[1] "The mother's sister; "the maternal uncle's wife; the paternal uncle's wife; the father's sister; the "mother-in-law, and the wife of an elder brother, are pronounced similar to "mothers. If they leave no son born in lawful wedlock, nor daughter's son, "nor his son, then the sister's son and the rest shall take their property." Here must be understood, 'on failure both of the daughter, and also of her 'daughter,' because only on failure of them does the right of inheritance pertain to the son born in wedlock, or to the daughter's son.

Heirs of a woman on failure of her husband, and parents, defined.

31. In respect of property given by the kindred [*Bundhoo*] at an *Asooru* marriage or the like, KATYAYUNU says:[2] "That which has been given to "her by her kindred, goes, on failure of kindred, to her son."

The son in that case inherits presents from kindred,

32. But on the subject of the perquisite, GOUTUMU holds:[3] "The "sister's perquisite belongs to the uterine brothers; after [the death of] the "mother."

And the brothers get the perquisite,

33. But what SHUNKHU says[4]: "The lover [may take back] his nup- "tial present [on the death of his betrothed mistress]," must be understood of one, dying previous to the celebration of the marriage. Here it is further remarked by YANYUWULKYU:[5] "If she die [after troth plighted], let the "bridegroom take back the gifts which he had presented; paying however, "the charges on both sides." The meaning is, that the husband may take back, if his bride be dead, what remains of the perquisite previously given, after calculating the expences, incurred by himself and by her father.

Gifts to be restored to the bridegroom,

CLXI, When the bride dies before marriage, deducting charges,

1—Jim. Va. 96. Digest 3-617. In the translation of Jim. Va, the maternal uncle is put for his wife, and the paternal uncle's wife is not noticed. The present version will be found in the Digest 3d, 618. except that *his* son is there explained, the son's son.

2—Jim, Va. 95. Digest 3d, 594-615. In both, it is '*husband*,' instead of *son*.

3—Mit. 369. Jim, Va. 91. Digest 3d, 614. All the authorities seem in favor of this version against Jimootu Vahunu.

4—Digest 3d, 614.

5—Mit 378.

Presents by the maternal kindred, belong to the brothers of a deceased damsel,

34. On some points BOUDDHAYUNU records a distinction:[1] "The "wealth of a deceased damsel, let the uterine brothers themselves take. "On failure of them, it shall belong to the mother; or if she be dead, to "the father." Those skilled in the ancient law have declared, that this relates to ornaments or the like, presented by the maternal grandfather and the rest, at the time of betrothal, to a girl [who afterwards] dies before completion of the marriage. Here ends the subject of woman's property.

SECTION XI.

OF EXCLUSION FROM INHERITANCE,—[*ONUNSHU*].

Persons excluded from inheritance; must be maintained,

1. YANYUWULKYU says:[2] "An impotent person, an outcast and *his* "*issue;* one lame, a madman, an idiot, a blind man, and a person afflicted "with an incurable disease, as well as others [similarly disqualified], must "be maintained, excluding them, however, from participation." *His issue,* means the offspring of an outcast.

but may recover their rights,

2. If, after division, virility or the other [absent qualification] be regained, by medicine or other means, the person will then receive his share, like as a son born after partition [does].[3]

Disinherited persons enumerated,

3. MUNOO says:[4] "Impotent persons and outcasts; persons born "blind or deaf; madmen, idiots, the dumb, and such as *have lost a sense* "[or limb, *nirindriya*], are excluded from a share of the heritage." *Have lost a sense,* deprived of the nose [or smell,] or the like. NARUDU also declares:[5] "An enemy to his father, an outcast, an impotent person, and one

1—Mit 374. Jim. Va. 90. Digest 3d, 612. 2—Mit 360 Jim, Va, 103, Digest 3d, 321, Reports 1st, 412.
3—Ante Sec. 4th, para. 35. 4—Chap. 9th, 201. Mit, 361, The term *Nirindriya* is explained, in Jim. Va. 103 note 7. Reports 1st, 78. 5—Mit 361 Jim. Va. 104 Digest 3d, 303. Repots1st, 78. Our author adopts none of the readings noticed by Jim. Va. but takes that of SHUNKHU's text below.

" *formally expelled* (*Upuyatritu*), take no shares of the inheritance, even " though they be legitimate: much less if they be sons of the wife by an " appointed kinsman." [1]: " One afflicted with an obstinate or an agonizing " disease, an idiot; one insane, blind, or lame, must be maintained by the " family, but their sons take the shares [of their parents."]

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Explanation of the term 'formally expelled,'

4. *Formally expelled*, one turned out by his kinsmen with the ceremony of kicking down a water pot or the like, for high treason [*Rajdrohu*] or a similar crime, according to MUDUNU. It properly applies to one who goes across the sea in a vessel or the like, to another quarter of the globe, for the sake of a livelihood; [for] [2]: " Communion is not permitted with a " *Brahmun* [*Dvij*] who has passed the sea in a ship, even though he have " performed penance for it;" therefore, connexion with such an one in this age of the world, is reprehended. And no form is laid down for performing the ceremony of kicking down the water pot, or for expulsion for high treason. SHUNKHU and LIKHITU [3]: " The heritable right of him who has " been formally degraded [*Upuyatritu*], and his competence to offer " oblations of food and libations of water, are extinct."

Another result of degradation,

Persons entering another order debarred from shares and sons of women married in irregular order,

5. VUSISHTHU [4]: " They who have entered into another order, are debarred " from shares." Here are meant the perpetual student, the hermit, and the ascetic. KATYAYUNU [5] " But *the son of a woman married in irregular order*, " as well as he who is produced *through a kinsman* [*Sugotru*], and an apos- " tate from a religious order, never obtain the inheritance."

Explanation of that term,

6. [Produced] *through a kinsman*, means one born of a woman married to one of her own [*Sugotru*] relations. *The son of a woman married in irregular order*, means, according to some, the *Kshetruju*, *Kaneenu*, and other sons. But, when the marriage of a younger daughter has been celebrated

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1—Digest 3d, 303. 2—General note to MUNOO, SMRITI (3).
3—Digest 3rd, 300. Jim. Va. 101, which attributes it to APUSTUMBU.
4—Mit. 355--361, Digest 3rd, 327. 5—Jim. Va. 104, and notes. Digest 3rd, 325--6.

whilst her eldest sister is still unmarried, they are then both said to be 'out 'of their order;' and this is the proper application of the term [*Ukrumu.*] If he be of the same class as his father, his qualification for inheriting is declared by the SAME AUTHOR [1]: "But the son of a woman married in irregular order "may be heir, provided he belong to the same tribe with his father: and so "may the son of a man, belonging to a different [but superior] tribe, by a "woman espoused in the regular gradation."

CLXIII. If of the same class as the father, the son may inherit.

Sons by a woman of higher class do not inherit.

7. Also, if sons be begotten by a husband on a wife sprung from a higher class, they shall not take the inheritance, for thus says the SAME AUTHOR: [2] "The son of a woman married to a man of inferior tribe, is not heir to the "estate. Food and raiment for life are considered to be due to him by his "kinsmen."

A vicious son does not inherit, if other sons exist,

8. If there be other sons endowed with good qualities, the inheritance is not to be taken by a vicious one; for says MUNOO [3]: "All those bro-"thers, who are addicted to any vice, lose their title to the inheritance." BRUHUSPUTI [4]: "Though born of a woman equal in class, a son destitute "of virtue is unworthy of the paternal wealth; it is declared to belong to "those kinsmen who offer funeral oblations to the deceased, and are of "virtuous conduct." "A son redeems his father from debt to superior or "inferior beings; consequently there is no use for one who acts otherwise."

Persons excluded from inheritance, must be maintained, as long as they live.

9. But all those excluded from participation must be maintained during the rest of their lives, by those who get the estate, from this text of MUNOO [5]: "But it is fit, that a wise man should give all of them food and raiment, "*without stint*, to the best of his power: for he who gives it not, shall be

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1—2—Digest 3d, 326, Jim, Va, 105, Of the readings mentioned, our author has, '*grassach,hadunum utyuntum.*'

3—Chapter 9th, 214, Jim, Va, 102 Digest 3rd, 299. 4—Jim, Va, 102, Digest 3d, 301--2, where the term *Shrotriya* is applied to the kinsmen themselves, as an illustration merely.

5—Chapter 9th, 202. Mit 362. Reports 1st, 412.

" deemed an outcast." (*Without stint*, signifies ' as long as they live,') as well as from the foregoing one of YANYUWULKYU [para: 1]: " Those " excluded from inheritance must still be maintained."

Except those entering another order, outcasts, and their sons, CLXIV.

10. Those who have entered into another order, and outcasts, as well as their respective sons, are not to be maintained. Thus VUSISHTHU says: " They who have entered into another order, are debarred from shares; " [para. 5]: as also an impotent man, a madman, and an outcast; but let the " impotent and madman (receive) *a maintenance*." Here, the maintenance of two only being mentioned, is meant as an indication that the others are excluded. DEVULU:[1] " When the father is dead [as well as in his life time], an " impotent man, a leper, a madman, an idiot; a blind man, an outcast, the " offspring of an outcast, and a person fraudulently *wearing the token* [of " religious mendicity], are not competent to share the heritage: food and " raiment should be given to them, excepting the outcast." *Wearing the token*, assuming a prohibited mark [*lingu*]. BOUDDHAYUNU[2]: " Let the " coheirs support with food and apparel those who are incapable of busi- " ness, as well as the blind, idiots, impotent persons, those afflicted with " disease and calamity, and others who are incompetent to the performance " of duties, excepting however the outcast and his issue." Even those degraded from the life of an ascetic, as well as their sons, are neither of them to be maintained, according to MUDUNU and others.

The qualified sons of a disinherited man, may inherit; with certain exceptions,

11. But the blameless sons, even, of one from these causes disinherited, shall take a share, according to the text of VISHNOO[3]: " The legitimate " sons, even of these, [are sharers of the patrimony]; but not the sons born to " a degraded man after the commission of the act which caused his degrada- " tion, nor those who are procreated [on a woman of a higher class, that is]

1—Jim. Va. 103. Digest 3d, 301. 2—Jim. Va. 104 Digest 3d, 316.

3—Digest, 3rd, 318.

" in the inverse order of the classes: their sons do not participate, even in " the property left by the paternal grandfather:" and this of Yanyuwulkyu [1]: " But their sons, whether legitimate, or the offspring of the " wife by a kinsman, [*Kshetruju*] are entitled to allotments, if free from similar " defects."

Special rule for their wives and daughters,

12. Yanyuwulkyu [2] delivers a special rule concerning the daughters and wives of these: " Their daughters must be maintained likewise, until " they are provided with husbands." " Their childless wives, conducting " themselves aright, must be supported; but such as are *unchaste*, should be " expelled: and so indeed should those who are *perverse*," If she be *unchaste*, a woman must be turned out of doors, and without a maintenance. A *perverse* woman also should be turned out of doors, but a maintenance must be provided for her, according to Mudunu, and others.

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1—Mit 363. Jim. Va. 107. Digest 3rd, 322. Reports 2nd, 669, properly applying to paras. 1–9, but omitted.
2—Mit. 363. Jim. Va. 107. Digest 3rd, 342. Reports, 1st, 412.

CHAPTER V.

NON PAYMENT OF DEBTS,—[*RUNADANUM*].

SECTION I.

OF LOANS IN GENERAL.

Loans.

1. BRUHUSPUTI [1] explains, on this subject, the rules for regulating a creditor's conduct, or transactions: "A prudent lender should always "deliver the thing lent, on receiving a *pledge* [*Bundhuku*] of adequate "value, either to be used by him, or merely kept in his hands; or with "a sufficient *surety* [*Lugnuku*], and either with a written agreement, or "before credible witnesses." A *pledge*, such as this, when the pawnee promises, 'As long as I fail to clear off thy debt, so long will I not alie-'nate, either in gift, sale, mortgage or other mode, this house, field, or other '[pledge].' *Surety*, one standing in the debtor's room. THE SAME AUTHOR says: [2] "That loan [*Runu*] which, increased to four times or eight times "the principal, is [thus] received back, without apprehension of sin, from "an abject or distressed person, is called a loan on interest [*kooscedu*]."

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Interest on them.

2. KATYAYUNU: [3] "Stipulated interest [*karitu*] is that which has been "specially [and freely] promised by the debtor, in a time of extreme dis-"tress, above the allowed rate." "When any one pays interest *from time* "*to time*, it is recorded as *Sikhavriddhi* or hair interest." *From time to time*, means interest is to be paid by the day, month, or year.

The rates of it.

3. YANYUWULKYU [4]: "An eightieth part [of the principal] is the month-

1—Digest 1st, 10. Strange's Elements 1st, 276-306. *Dhunik, Oottumurnik*—a leader, obligor, creditor. *Runik, Udhumurnik*,—the borrower, obligee, debtor, 2—Digest 1st, 11.
3—Digest 1st, 60. Colebrooke on Oblig. 64. For interest, see Strange, 1st, 295-6. 4—Digest 1st, 12.

" ly interest, when a pledge has been delivered: *otherwise,* it may be, in " the direct order of the classes, two, three, four, or five in the hundred." *Otherwise;* if there be no pledge; for VYASU [1] says: " Monthly interest is " declared to be an eightieth part of the principal, if a pledge be given; a " sixtieth part is to be paid, if there be [only] a surety; and if there be " neither pledge nor surety, two in the hundred [may be taken from a " debtor of the sacerdotal class.]" YANYUWULKYU [2] ordains: " All bor- " rowers, who travel through vast forests, may pay ten, and such as traverse

CLXVII. " the ocean, twenty in the hundred:" They must pay it, as shewn by the last half of the couplet: " To lenders of all classes [according to circum- " stances]; or whatever interest has been stipulated by them [as the price of " the risk to the lender]."

When due without stipulation.

4. VISHNOO says: " In all the classes, if a person borrow money under " agreement, as, 'I will repay it to-morrow,' but should for his own profit " not pay it, the lender shall receive interest from after [the term fixed]." The interest on a thing lent for use [*Yachitu*], is thus declared by KATYA- YUNU: [4] " He who, having received a chattel lent for use, goes to a foreign " country without restoring it, must pay interest, according to the value of " it, after one year."—[4]: " Though a loan be made [expressly] without " interest [*Ooddharu*], yet, if the debtor pay not the sum lent after demand, " but [fraudulently] go to another country, that sum shall carry interest after " a lapse of three months."—[5]: " A debtor, who, even residing in his own " country, pays not [the debt] after more demands than one, shall be forced, " however unwilling, to pay interest on it, though not stipulated, [after the " lapse of one year]." And NARUDU [6] says: " There shall be no interest, " without a special agreement, on valuable things lent through friendship

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1—Digest 1st, page 36 and 37, for the different readings.
2—Digest 1st, page 40. Strange 1st, 286.
3—Digest 1st, page 104. where it is 'three seasons.'
4—Digest 1st, 97.
5—Digest 1st, 99-100.
6—Digest 1st, 104.

" [for use, not for consumption]; but, even without agreement, property so " lent bears interest after half a year." KATYAYUNU[1]: " What has been " amicably lent for use, shall bear no interest until it be demanded back; " but if, on demand, it be not restored, it shall bear interest [on its true " value] at the rate of five in the hundred."—[2]: " Should a man, having " bought a marketable commodity, [fraudulently] go to another country, " without paying the price of it, that price shall bear interest after three " seasons [or six months]." " [Even without a journey to a foreign country], " a deposit, the balance of interest, a commodity sold, and the price of a " commodity purchased, not being paid [or delivered] after demand, shall " bear interest, at the rate of five in the hundred [if the debtor be a " *Shoodru*]."

Stipulation of it when necessary.

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5. NARUDU[3] says: " A commodity, the price [of a commodity], wages, " a deposit, and [the like]; a fine [to the king], a thing clandestinely taken " [without a design to steal it], a thing idly promised, and *a stake played* " *for*, carry no interest [before demand], *without a special agreement*." A *stake played for*, the object played for with dice. *Without special agreement*, not positively declared. YANYUWULKYU:[4] " Property lent, which the " creditor will not receive back, when tendered, must be deposited with a " third person, and bears no interest afterwards."

Accumulation by interest specified.

6. BRUHUSPUTI:[5] " On the precious metals [or gems], the interest may " make the debt double; on clothes and inferior metals, treble; on grain, " quadruple; so on *fruit*, *beasts of burden*, and *wool* or hair." *Fruit*, flowers, roots, fruits &c. *Beasts of burden*, bullocks, &c. *Wool*, that of sheep; and the hair of the *Chumri* [*Bos Grunniens*] and other [animals of that species.] But, this of MUNOO:[6] " Interest on grain, on fruit, on wool

1—Digest 1st, 99.
2—Digest 1st, 101.
3—Digest 1st, 124.
4—Digest 1st, 183.
5—Digest 1st, 112.
6—Chap. 8th, v. 151. Digest 1st, 110.

" or hair, on beasts of burden, [lent to be paid in the same kind of equal " value,] must not be more than enough to make the debt quintuple," must be understood as a prohibition of sixfold, or higher increase. KATYAYUNU says:[1] " For gems, pearls and coral; for gold and silver, for cloth made " of [cotton] the produce of fruit, or made *of silk*, or made of *wool* or hair, " the interest stops when it doubles the debt." *Of silk*, that is, made from the produce of insects, and clothes made from the *hair* of the *chumri* and other animals. VUSISHTHU: " Interest on copper, iron, queen's metal, prince's " metal, tin, and also on lead, makes the debt three fold, only if much " time have elapsed." VYASU: " Interest increasing the debt sixfold, is " declared allowable on vegetables, cotton, and seeds." KATYAYUNU:[2] " For all sorts of oil and spirituous liquors, for the different kinds of cla- " rified butter, for molasses, and salt, the interest is held legal, though [with " the principal], the debt be made octuple." VISHNOO:[3] " On precious " metals, [or gems], the highest interest shall make the debt double; on " cloth, treble; on grain, quadruple; [on fluids, octuple]; on female slaves " or cattle, the offspring shall be taken as interest." So:[4]: " [Rare] " flowers, roots, and fruit; what is sold by weight [except gold and the " like], may make the debt eight fold."

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Explanation.

7. NARUDU:[5] " Of interest on loans, this is the *universal* [and highest " rule]; but the rate customary in the country where the debt was contract- " ed may be different." *Universal*, every where current; and this relates only to a debt doubled, or more than doubled, by interest, by the first transaction; for if at a different time a fresh speculation be entered into, with a different person, or even with the same, under a chance of profit or loss, in such case, even higher interest may accrue. So also MUNOO[6]: " Interest on " money received at once, [not month by month, or day by day, as it ought,]

1—Digest 1st, 109.
2—Digest 1st, 121.
3—Digest 1st, 113.
4—Digest 1st, 11k. VUSISHTHU.
5—Digest 1st, 53.
6—Chap. 8th, v. 151. The last hemistich was quoted above.

" must never be more than enough to double the debt, [that is, more than the " amount of the principal paid at the same time]." But in any one case where it is realized [by degrees], or at various times also, more than this legal or allowable interest may be levied, according to VINYAKESHWURU and other authorities. [1]

SECTION II.

OF PLEDGES,—[ADHI].

1. BRUHUSPUTI:[2] " A pledge [*Adhi*] is called *bundhu*, and is declared to " be divisible into four parts: Moveable [or personal]; and fixed, [or real]; " for custody only [*gopyu*]; and for use [*bhogyu*]." NARUDU:[3] " That " to which a [secondary] title is given, is a pledge. It has two forms, to be " released at a fixed time, or to be retained until payment be tendered."

Pledges.

2. HAREETU: " In the same state as the pledge has been deposited, " even so let the pawnee take care of it: otherwise he shall lose his inter- " est; or in case of its being *damaged*, he shall pay the value of it." *Damaged*, that is, if the pledge be destroyed. YANYUWULKYU:[4] " If a " pledge for custody [*gopyu*] be used, there shall be no interest, nor, if a " pledge for use [*bhogyu*] be *damaged*:" meaning, *damaged* so as to be unfit for use. KATYAYUNU:[5] " He who *employs on work* an unwilling [slave or other " living] pledge, without the assent [of the owner], shall be compelled to pay " the value of the work, or shall receive no interest on his loan." *Employs* " *on work*, makes use of him. *Value of the work*, the hire [of the person &c. employed].

Rules for their custody.

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1—Cole. on Oblig. 80.
2—Digest 1st, 140. q. v.
3—Digest 1st, 142.
4—Digest 1st, 146. Strange's Elem. 1st, 268.
5—Digest 1st, 151.

Damage by the pawnee.

3. YANYUWULKYU[1]: " A pledge *spoiled*, [lost], or destroyed, unless by " the act of God or the king, shall be *made good* [by the creditor]." *Spoiled*, which has incurred damage. *Made good*, by being restored equal to its former state. BRUHUSPUTI:[2] " Any pledge, being used, and wholly spoil- " ed [by the fault of the pledgee], the principal debt shall be lost." In case of a pledge being damaged, its value must be paid for, as VYASU says[3]: " If gold, or other (precious) thing, shall be pledged, and lost by the neg- " ligence of the receiver, that creditor, on the principal and interest of his " loan being paid, shall be forced to pay the price of the pledge." NARUDU:[4] " If a pledge be lost [and the creditor do not replace it], the principal " itself shall be forfeited; unless the loss was caused [without his fault] by " the act of God or of the king." MUNOO:[5] " [The pawnee] must satisfy " the pawner, [if the pledge be spoiled or worn out], by paying him the ori- " ginal price of it; otherwise, he commits a theft of the pawn."

When to be renewed or made good by the pawner.

4. BRUHUSPUTI:[6] " If a pledge be destroyed by the act of God or the " king, the creditor shall either obtain another pledge, or receive the sum " [lent] together with interest." VYASU[7] says: " If the pledge be de- " stroyed by the act of God or the king, no fault is by any means imputable " to the creditor." KATYAYUNU:[8] " When a pledge becomes unfit for

CLXXI.

" use, or perishes, without any fault on the part of the creditor, the debtor " shall be compelled to deliver another pledge; [for], he is not exonerated " from the debt." YANYUWULKYU[9] also declares: " By the acceptance " [or actual possession] of a pledge, [the] validity [of the contract] is [main- " tained]. If it be spoiled, when carefully kept, another chattel must be " pledged, or the creditor must receive the amount [of principal and interest]."

1—Digest 1st, 145, See post. Chap. 6th paras. 5—7.
2—Digest 1st, 149 Strange 1st, 283-288.
3—Digest 1st, 146.
4—Digest 1st, 145.
5—Chap. 8th, v. 144, Digest 1st, 150. Strange 1st, 288.
6—Digest 1st, 159.
7—Digest 1st, 160.
8—9—Digest 1st, 161. Strange's Elem. 1st, 291.

5. NARUDU [1] says: " Pledges [*Adhi*] are declared to be of two sorts, " immoveable and moveable; both are valid when there is actual enjoy- " ment, and not otherwise." VUSISHTHU also says: " When more Deeds " than one have been drawn up, at the very same time, in a case of pledge, " he who has first got possession must be held to have the strongest pledge." THE SAME AUTHOR adds: " If two creditors should, on the very same " day, come with a view to take possession of their pledge, it must then be " equally divided, and possessed by them; this is certain." KATYAYUNU: [2] " Should a man hypothecate the same thing to two creditors, what must be " decided? The first hypothecation shall be established, and the debtor " shall be punished as for theft."

Rules in cases of re-bailment.

6. YANYUWULKYU [3] says: " That pledge is totally lost, which the " pawner fails to redeem when the principal is doubled. That fixed with " a term for redemption, is lost on the expiration of the term: but an usu- " fructuary pledge is never destroyed." But BRUHUSPUTI [4] declares: " Gold being doubled, and the stipulated period having expired, the creditor " becomes owner of the pledge, after the lapse of fourteen days." VYASU: [5] " After giving notice to the debtor's family, a pledge for custody may be " used when the principal is doubled, and so may a pledge for a limited " period, when that period is expired."

Lapse of the term.

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7. BRUHUSPUTI [6]: " When the debt is doubled by the interest, and the " debtor is either dead, or has absconded, the creditor may attach his " [pledge or the debtor's] chattel, and sell it before witnesses." YANYU-WULKYU: [7] " A debtor shall be compelled to pay, with interest, a debt " contracted on *a peculiar pledge*, [*Churitrum*] and he shall be compelled to " re-pay twofold, a debt contracted on a chattel [of small value] *delivered*

1—It is attributed to VYASU in the Digest 1st, 206. Reports 1st, 304. 2d, 134. Strange 1st, 287-290. —

2—Digest 1st, 209. For hypothecation, see Strange's Elem. 1st, 288-89. Essay on Bailments p. 83-4.

3—Digest 1st, 183. Reports 1st, 303.

4—Digest 1st, 186, where the text is attributed to VYASU. Reports 1st, 303.

5—Digest 1st, 197.

6—Digest 1st, 199. Strange's Elem. 1st, 288.

7—Digest 1st, 203, from which the present translation deviates to suit the gloss.

" *as an earnest* [of purchase or sale.]" When a borrower, from his confidence in the lender, deposits with him a valuable pledge for a small consideration, or where the lender, entertaining a like confidence in the borrower, advances a large sum on a pledge of small value, this will be a *peculiar pledge;* or the word *Churitrum* may signify, the pledge of good actions, as, of the reward for ablution in the Ganges, or the like. And in both these species, denominated *peculiar pledge*, even if the thing be doubled by interest, it is not forfeited. Even if the debt be doubled, it must be paid, but the pledge is not forfeited. *Delivered as an earnest,* means that when a debt contracted on such grounds is doubled with interest, the earnest so pledged is not forfeited.

Redemption of mortgage.

8. THE SAME AUTHOR [1] says: " To the debtor who comes to redeem " his pledge, the creditor shall restore it, or be punished as a thief; and " if the creditor be [dead, or] absent, the debtor may pay the debt to his " kinsmen, and shall take back his pledge." [2]: " Or appraised at the va- " lue it then bears, it may remain there [with the creditor], exempt from in- " terest." If the creditor [*Oottumurnu*] be not present, [the debtor] may place the amount of his debt, with its interest, in the hands of some other person of his creditors's family, and take back his pledge. Or if he wish to sell the pledge, from desire of realizing its value, let him have it valued at the time, and leave it in deposit [with his creditor, but] without interest [considering it a debt discharged]. This is the meaning. BRUHUS-

CLXXIII. PUTI: [3] " When land or other [immoveable property] has been enjoyed, " and more [than the principal debt] has accrued therefrom, then, the " principal and interest having been realized, the debtor shall obtain his " pledge." YANYUWULKYU: " Whenever a debt under mortgage has be- " come doubled by interest, then the pledge shall certainly be returned, " whenever double the sum lent has been received."

1—Digest 1st, 160. 2—Digest 1st, 171 3—Digest 1st, 177.

SECTION III.

OF SURETIES,—[*PRUTIBHOO*].

1 Now *surety* is of three kinds, according to YANYUWULKYU,[1] who says: "Suretiship is ordained for appearance, for *trust*, and for payment." *Trust* here means,—Raising of confidence, by saying 'this man is true.' BRUHUSPUTI[2] again, enumerates four kinds of sureties, [of whom]: "The "first says, 'I will point him out;' the second, 'this man is trust-wor-" thy;' the third, 'I am the payer of this money;' the fourth, '*I will cause* " *to give it*." Which last means, 'I will hereafter make [the debtor] pay 'this debt' KATYAYUNU says: "Let three full *Pukshu*, or lunar *half-months*, " be allowed to the surety, for the purpose of seeking an absconded " principal, and if he point out the principal, then let the surety be held " worthy of being absolved." The three *half months*, are to be understood only as an example, meaning, that so much time must be allowed as is required for the search.

Sureties.

2. KATYAYUNU:[3] "If a surety for the appearance of a debtor produce " him not at the time, and in the place agreed on, he shall *discharge* " *what he is bound for*, unless he was prevented by the act of God or the " king." *Discharge what he is bound for;* shall pay the sum due to the creditor. BRUHUSPUTI[4]: "The two first [kind of sureties] on failure of " their engagement, must pay the sum lent, at the time stipulated: the " two last, or in default of them, their issue, when the debt is sued " for," KATYAYUNU[5]: "Money due by a surety need not on any " account be paid by his grandsons, but in every instance such a debt " incurred by his father must be made good by a son, without in-

When liable themselves,

and their sons, CLXXIV.

1—Digest 1st, 239. Report 1st, 98. Strange 1st, 292-9.
2—Digest 1st, 233.
3—Digest 1st, 241.
4—Digest 1st, 238.
5—Digest 1st, 266.

"terest." VYASU:[1] "The son of a son shall [in general] pay the debt "of his grandfather, but the son [only] shall pay the debt of his father "incurred by his becoming a surety, [and both of them] without interest; "but it is clearly settled, that their sons, [the great grandson and grandson "respectively] are not [morally] bound to pay." The grandsons need only pay the principal amount of their grandfather's debts—A son need only pay the principal of a debt incurred by his father as a surety, and devolving on him.

but not grandsons.

Exception.

3. This however, supposing the security to have been undertaken by him without receipt of property [or consideration] in return; for if he received [any] property as an inducement to become surety, in that case, the sum for which he was bound shall be paid with interest, by his sons or grandsons. And accordingly KATYAYUNU[2] declares: "Should a man "become surety for the appearance of a debtor, from whom he had received "a pledge [as his own security], the creditor, [if that surety die], may "compel his son to pay the debt, even without assets left by his father."

Law of "jointly and severally."

4. YANYUWULKYU:[3] "When there are two or more sureties jointly "bound, they shall pay their proportionate shares of the debt; but when "they are bound *severally* [*Ekucchaya*], the payment shall be made [by any "of them], as the creditor pleases." *Severally*, is when each of them makes this agreement, 'I alone will pay the whole.' This [agreement] being obtained as the creditor's guarantee, any one of the sureties, from whom he may please to demand the debt, must pay it. If the compact of each be thus, 'I will pay my share;' then payment must be made accordingly. Thus must it be understood. KATYAYUNU: "When two or more are "severally bound, any one of them may be made to pay, wherever he is "found. If absent in a foreign country, his son shall pay the whole; if

1—Digest 1st, 254.

2—Digest 1st, 248-49, the second reading is followed.

3—Digest 1st, 247. Colebrooke on Obligations, 158-61.

" the father be dead, his son shall be forced to pay, according to his *father's* " *share*." *Father's share*, that is, in proportion to the father's share [of the whole debt guaranteed].

CLXXV. Surety's remuneration by the principal.

5. YANYUWULKYU:[1] " When the surety is compelled to pay a notorious debt to the creditor, the debtor shall be forced to repay double the " sum to the surety." BRUHUSPUTI: [2] " Should a surety, being harassed, " pay the debt for which he was bound, he shall receive twice the sum from " the debtor, after the lapse of a month and half."

SECTION IV.

Recovery of Debts.

1. Now these are the rules for recovery of debt by a creditor. BRUHUSPUTI:[3] " From a debtor who *promises* payment, the debt may be " recovered by mild remonstrance and the like; and *by other resources*; " by the mode of moral duty; by legal deceit; by violent compulsion; and " by confinement at home." *Promises*, engaged for by the debtor.

Means of recovery enumerated.

2. *By other resources*, that is, by the means [*oopaya*], which are thus enumerated by THE SAME AUTHOR:[4] " By the interposition of friends and " kinsmen, by mild remonstrance, by importunate *following*, or by *staying* " constantly *at the house* of the debtor, he may be compelled to pay the " debt: this mode of recovery is called a mode consonant to moral duty, " [*Dhurmu*]."[5]: " When a creditor, with an artful design, borrows any " thing of his debtor, or withholds a thing *deposited* by him, or the like, and " thus compels payment of the debt, this is called legal deceit [*oopudhi*]." [6] " When, having tied the debtor, he carries him to his own house, and " by beating or other means compels him to pay, this is called violent

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1—2—Digest 1st, 258. Cole. on Obligations, 158-61.
3—Digest 1st, 349.
4—Digest 1st, 339.
5—Digest 1st, 341. Colebrooke on Obligations, 203. Strange's Elem. 1st, 283.
6—Digest 1st, 343

"compulsion [*bulatkaru*]." [1] "When he forces the debtor to pay, by confining "his son, his wife, or his cattle, or by watching constantly at his door, "this is called lawful confinement [*Achuritum*]." *Following*, claiming his attention. *Staying at the house*, begging the money of him. *Deposited*, [*Unrahitum*] ornaments or other things, given as if for delivery to another. [2]

Rules for enforcing them CLXXVI.

3. The rules for putting such means in force, are thus declared by Katyayunu [3]: "By mild expostulation let a creditor procure payment from "a king, from his master, and from a priest; but from a friend, or an heir, "by some artful contrivance." "Bhrugoo ordained, that merchants, cul-"tivators of land, and artists, must be made to pay their debts according "to the custom of the country; but that a creditor might enforce pay-"ment from dishonest debtors, by violent measures." The same author adds, [4]: "A debtor, being arrested [and freely acknowledging the "debt], may be openly dragged before the public assembly, and confined "until he pay what is due, according to the immemorial usage of the "country [*deshacharu*]." Preventing the prisoner from performing natural evacuations, is thus prohibited by the same author: [5] "When a "prisoner has need of ejecting urine or fœces, he should either be fol-"lowed [at a distance], or dismissed on *security*." *Security*, by leaving his son or other relative, to be a prisoner in his stead.

Security to be taken.

4. Taking security for a prisoner's appearance, he may be set at liberty for meals; for the same author says: [6] "Should he have given a surety, "he must be released each day, at the hour of meals; and at night, if a "surety have been given to such effect: But if he do not tender a "surety for appearance, *nor avail himself* of such a surety, he must be con-"fined in *jail*, or delivered to the custody of keepers." "A venerable,

1—Digest 1st, 342. Strange 1st, 307.
2—Chapter 6th, para. 6.
3—Digest 1st, 344. q. v.
4—Digest 1st, 339.
5—Digest 1st, 346. where it reads, 'in fetters'
6—Digest 1st, 346-7. Strange's Elem. 1st, 307.

" *trust-worthy*, and virtuous man, shall not be confined in jail; unrestrained,
" he must be released, [or dismissed] under the obligation of an oath."
Nor avail himself, if he should not give [security], having the opportunity.
Jail, a prison. *Keepers*; that is, he must be put in confinement, duly made over to the officers. *Trust-worthy*, creditable.

Compound Interest allowed.

CLXXVII.

5. BRUHUSPUTI:[1] " *After the time for payment has past*, and when the
" interest ceases [on becoming equal to the principal], the *creditor may*
" *either recover his debt*, or require a new writing in the form of *wheel*
" *interest* [*Chukruvriddhi*]." *After the time for payment has past*, that is, when the debt having by interest become double, or more than that [where higher interest is legal], the interest on that event reaches its legal boundary. *The creditor may recover his debt*, may exact it. Charging interest on a debt, of which the interest has been [from time to time] added to the principal, is called *Chukruvriddhi*, *wheel* or *compound interest*.[2]

Mode of exacting payment of acknowledged debts.

6. NARUDU:[3] " Should a debtor be disabled, by [famine or other] ca-
" lamity of the time, from paying the whole debt, he shall be only com-
" pelled to pay it [in small sums], from time to time, according to his
" ability, as he happens to gain property." MUNOO:[4] " Even by per-
" sonal labour shall the debtor pay what is adjudged, if he be of the
" same class with the creditor, or of a lower; but a debtor of a higher
" class must pay it [according to his income], by little and little." And though YANYUWULKYU[5] says: " He may compel a poor debtor of a low
" class to do work, by way of paying his debt: but a *Brahmunu*, if indi-
" gent, must be made to pay gradually according to his income [or casual
" gains:]" yet the word, *Brahmunu*, here refers to any man of high cast.
THE SAME AUTHOR[6] adds: " He who recovers an acknowledged debt

1—Digest 1st, 357. Strange 1st, 297.

2—Cole. on Oblig. p. 80. " Compound Interest."

3—Digest 1st, 353.

4—Chapter 8th, v. 177.

5—Digest 1st, 351. Strange's Elem. 1st, 308, See Chap. 16th, Sect. 1st, para. 3, note.

6—Digest 1st, 356.

" by his own act, [in any of the legal modes to which the debtor has
" tacitly consented] shall not be blamed by the king; and if the debtor
" shall complain of such an act before the king, he shall be fined, and
" compelled to pay the debt."

Debtor's appeal to Justice.

7. BRUHUSPUTI [1]: "This rule concerns an acknowledged debt; but he " who contests the demand, shall be compelled to pay, on proof in court " by written evidence or oral testimony." " When the debtor appeals to " judicature, or when the demand is unliquidated [or doubtful, *sundigdhe*] " he shall never be constrained by the mere act of the creditor; and he who " *constrains* a debtor thus exempted from such constraint, shall be fined " according to law." *Constraint* [*Asedhu*]; [2] imprisonment not against the king's order. He adds: [3] " A debtor is considered as appealing to " judicature, when he says, ' I will pay whatever shall by law be declared " ' to be due.'" KATYAYUNU: [4] " Any creditor who harasses a debtor " appealing to judicature, shall forfeit that claim, and pay an equal fine." BRUHUSPUTI: " Should any person take upon himself to act in a disputed " matter, without having first made known his case to the prince, he shall " be seized and sentenced to punishment; neither shall his claim be " awarded."

CLXXVIII

Costs of Suit.

8. YUMU: [5] " If a rich debtor, through dishonest perverseness, pay not " his debt, the king shall compel him to discharge it, and may take from him " twice the sum [as a fine]." YANYUWULKYU: [6] " A debtor shall be forced " to pay to the king *ten in the hundred*, of the sum proved against him; " and the creditor, having received the sum due, must pay five in the hun- " dred [towards defraying the charges of judicature]." *Ten in the hundred*,

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1—Digest 1st, 363-4.
2—See Chap. 1st, Sec. 1st, para. 16.
3—Digest 1st, 364.
4—Digest 1st, 368.
5—Digest 1st, 368. Strange's Elem. 1st, 807.
6—Digest 1st, 372. Strange's Elem. 307-8. This was the practice under the Muharatta Government, which levied a tax upon both parties, that from the winner being termed *Hurkee*, that of the loser *Goonahgaree*.

that is, ten besides [or over] every hundred [awarded to his creditor]. A tenth share [from the debtor cast], and a twentieth, [from the creditor] is here meant: The result is, that these two shares belong to the king, and the balance goes to the creditor. Taking a tenth share, relates to a poor debtor; for in respect to a rich one, NARUDU [1] records this distinction: "But "if a rich debtor, though dishonest perverseness, pay not his debt, and "the king be forced to cause payment, he may then take *twenty* as his "share." meaning, *twenty* on the hundred.

Priority among many claims.

9. When more creditors than one are collected together against one debtor, the order of payment is [to be as] thus laid down by YANYUWULKYU: [2] "A debtor shall be forced to pay his creditors in the order in "which the debts were contracted, after first discharging those of a *Brahmun*, or of the king." And in the VIVADU RUTNAKURU we find these words of KATYAYUNU [3]: "If there be many debts at once, that which was "first contracted shall first be paid, after those of a king, or of a *Brahmun* "learned in the VEDU.": [4] "If all the contracts were written in one "day, the debts, payment, subsisting demand, and interest, shall be equal; "otherwise, in order of time.": [5] "That capital on which it is proved "that the assets were gained, and no other debt, must be paid by the "debtor [out of those assets]."

CLXXIX.

Receipts and acquittances.

10. YANYUWULKYU: [6] "If the debtor pay by little and little, let him "write the sums paid on the back of his written contract, or let the cre-"ditor give a receipt signed by his own hand." NARUDU: [7] "Let the "creditor give a writing after the debt has been acquitted; or if that can-"not be, let him make a [publick] *acknowledgement*: this shall be a mutual "acquittance of the creditor and debtor." *Acknowledgement*, some deed

1—Digest 1st, 371. and 375.

2—Digest 1st, 736. and note. In the 7th line, "oottumvurnanam" is printed for oottumurnanam, contrary to all the manuscripts.

3—4—Digest 1st, 377-8.

5—Digest 1st, 380.

6—Digest 1st, 385.

7—Digest 1st, 384.

of settlement, for the purpose of making known repayment of the debt.

Moral effect of fraud.

11. The bad consequences that will ensue to a debtor, neglecting to pay his debts, are now described. KATYAYUNU says: "He who shall not pay "to his creditor what he has received from him in *loan* [*Ooddharu*] or "*other* way, shall most certainly be born again, either his *slave, servant,* "wife, or beast of burthen." *Loan,* debt [of all kinds, *runu*]. To *other,* must be supplied, loan for use, and deposit. *Slave,* one by birth. *Servant,* a slave bought with a price. NARUDU: "If a man do not repay "what he has borrowed for use, and a debt, as well as what he has *pro-* "*mised,* that sum may be increased, even to ten million times its original "amount. And after that, if it be allowed to increase still more, until "by its own accumulation it have amounted to an hundred [times] ten "million, it must then stop; the debtor shall become, in each succes- "sive birth, a horse, an ass, a bullock, and a slave." *Promised,* what he has agreed to give. VYASU also says: "When a person, being either an ascetic, "or keeper of a perpetual fire, dies indebted to any one, the future re- "wards, of the austerities of the one, and the sacred duties of the other, "shall all be transferred to the account of the creditor."

CLXXX.

Sons and grandsons when liable.

12. BRUHUSPUTI [1] declares: "The sons must pay the debt of their "father, when proved, as if it were their own [that is, with interest]; the "son's son must pay the debt of his grandfather [but] without interest; "and his son [that is, the great grandson], shall not be compelled to "discharge it, [unless he be heir, and have assets]." So YANYUWULKYU: [2] "The father being gone to a foreign country, or deceased [naturally or "civilly], or wholly immersed in vices [or difficulty], the sons, or their sons, "must pay the debt; but if disputed, it must be proved by witnesses."

Only when twenty years old.

13. Debts must be paid by the sons, or other relatives, when they have

1 —Digest 1st, 265-6, and note. Reports 2d, 9.

2—Digest 1st, 268. Reports 2d, 200. Colebrooke on obligations, p. 25. and Strange's Elements, 2nd, 443.

reached their twentieth year, for NARUDU says:[1] "The father, or [if the "family be undivided], the uncle, or the elder brother, having travelled "to a foreign country, the son shall not be forced to discharge the debt "until twenty years have elapsed." KATYAYUNU:[2] "If the father be at "home, but afflicted with a chronick disorder, [though not without hope "of recovery], or *absent*, his debt shall be paid by his sons, after a lapse of "twenty years." The word *absent* includes the sense of 'dead,' as well; even as VISHNOO says.[3]: "If he who contracted the debt should die, or "become a religious anchoret, or remain abroad for twenty years, that "debt shall be discharged by his sons or grandsons, but not by remoter "descendants, against their will."

Sons of debtors how to act.

14. NARUDU:[4] "A father being dead, his sons, whether after partition "or before it, shall discharge his debt in proportion to their shares; or "that son alone who has taken the burden upon himself." KATYAYUNU: "If any debts exist against the father, his son shall not take possession of "his effects. They must be given to his creditors, and if he die *without* "*wealth*, still his son must pay his debts." *Wealth*, must be connected to *without*; the meaning is '[if he die] *without wealth*'. BRUHUSPUTI:[5] "The father's debt must be first paid, and next a debt contracted "by the man himself; but the debt of the paternal grandfather must even "be paid before either of those."

CLXXXI.

Debts not recoverable from sons.

15. YANYUWULKYU:[6] "A son need not pay, in this world, money "due by his father for spirituous liquors, for lustful pleasures, for losses "at play; nor what remains unpaid of a fine, or toll [*Shoolku*]; nor any "thing idly promised." BRUHUSPUTI:[7] "The sons are not compellable "to pay sums due by their father for spirituous liquors, for losses at play, for

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1—2—Digest 1st, 277. Reports 2d, 57. 3—Digest 1st, 266.
4—Digest 1st, 267. Colebrooke on Obligations, pages 25 and 152, particularly. 5—Digest 1st, 265.
6—Digest 1st, 311. Reports 2d, page 200. 7—Digest 1st, 305.

" promises made without any consideration, or under the influence of lust, " or of wrath; or sums for which he was a surety; [1] or a fine, or a toll " [*Shoolku*], or the balance of either." OOSHUNA declares: [2] " A fine, or the " balance of a fine, as also a bribe [or toll, *Shoolku*] or the balance of it, are " not to be paid by the son, neither shall he discharge debts improper, [not " sanctioned by law or custom]."

Order of those liable for a man's debts.

16. The order of those bound to pay the debts (of one deceased) is thus told by YANYUWULKYU: [3] " He who has *received the estate*, must " pay the debts of it; and in like manner, he who *takes the wife* [of the " deceased]; or the son, whose [father's] *assets are not held by another* " [*ununyashritu*]*:* but of one having no son, the other heirs [*Rikthinuh*, " must pay the debts: or, may levy them. para. 18.]" He is said to *receive the estate* legally, who does so, even when there is a son of the deceased in existence, but disqualified by some disheriting defect, as if he be an eunuch, or the like; but illegally, when he usurps the estate of a father, whose son is free from any disqualification. The same [responsibility attaches] to him who *takes the wife* of another. The term, *assets not held by another*, may be understood in both ways, [of one who has taken his father's assets, as well as one whose father had no assets], by reason of the absence of an opponent endowed with the quality of alienation, as well as from the absence of an opponent only pointing out the quality of property.

Responsibility defined in each case.

CLXXXII.

17. And first of all, he who has received the estate; on failure of him, the person who takes the wife; and on failure of him, the son, possessed of unalienated wealth [*Ununyashritu*]. If there be none, it must be paid by the grandsons, but the principal only. If they be not in existence, then the great grandson, the wife, daughter, or other heirs [*rikthinuh*], if they have received the estate, must pay the debt—such is the meaning. It is not to be paid by the great grandson, the wife, or the others, if they have not taken the estate. But

1—See Sec. 3d, paras. 2-3. 2—Reports 2d, 303, note. 3—Digest 1st 270-71-75, and the readings there.

receipt of ever so small a portion of the estate, imposes the liability of liquidating the debts, to whatever amount. For there is no such law, as [that payment shall follow only on receipt of property] equal or more than equal [to the debt to be paid.]

18. The wife, daughters, and other heirs to a creditor dying without male issue, being entitled to receive his estate, may levy his debts from his debtor. This is another meaning of the latter part [of the text, para. 16].

Heirs of a creditor can recover.

19. VISHNOO:[1] "He who takes the estate of one whether leaving a "son or no male issue, must pay his debts." This is the meaning. BRUHUSPUTI:[2] "Even so, the person who takes the widow shall be liable for the "debt, on failure of successors to the estate." KATYAYUNU:[3] "The "judge shall compel a son to pay the debt of his father, provided he be "involved in no distress, be capable of property, and liable to bear the "burden; but in no other case shall he compel the son to pay his father's "debts." "First let him who takes the estate pay; after him, the son; if "there be no son, or he be utterly destitute of means, then he who takes "the wife." NARUDU:[4] "But if a woman take the protection of another "man, carrying her riches and her offspring, he must pay the debt of her "husband, or abandon such a woman." KATYAYUNU:[5] "A debt which "has been contracted by indigent and childless vintners, and the rest, "must be paid by him, who has the care of their wives." NARUDU says:[6] "Of the successor to the estate, the guardian of the widow, and the son, "he who takes the assets becomes liable for the debts; the son, if there be "no guardian of the widow, nor a successor to the estate; and the person "who took the widow, if there be no successor to the estate, nor son." Or, the meaning of the last part is, 'that if there be no son possessed of wealth,

Continuation of the subject.

CLXXXIII.

1—It would seem that some text of VISHNOO had been omitted here, and that the succeeding passage was the commentary, but all the copies read it in this way.

2—Digest 1st, 274.

3—Digest 1st, 272.

4—Digest 1st, 330.

5—Digest 1st, 325.

6—Digest 1st, 272. Reports 1st, p. 159, note 3.

'then he who takes the widow must pay the debts of the deceased;' by reason of the former quoted text of YANYUWULYKU, [para. 16].

Debts binding on the head of the family, when contracted for its use by others.

20. KATYAYUNU says[1]: "Debts incurred for domestic uses, by the "slave, wife, mother, or disciple, of one gone to a far country, or deceas- "ed, and also by his son, must be paid, so says BHRIGOO." And YANYUWULKYU holds[2]: "A woman shall not pay debts incurred by her "husband, or son; neither a father those of his son, nor a husband those "of his wife, unless contracted on account of the family." KATYAYUNU: "That must be paid which may have been verbally promised, as well as "what has been engaged for to another." NARUDU:[3] "A father must "pay the debt of his son, contracted in a time of distress." YANYUWULKYU[4]: "If the wife of a herdsman, a vintner, a dancer, a washerman, "or a hunter, contract a debt, the husband shall pay it, because his "livelihood chiefly depends on the labour of such a wife." THE SAME AUTHOR says[5]: "A debt *acknowledged* [by her husband], or contracted "by her jointly with her husband or son, or contracted by the woman "herself, must be paid by a wife [or mother;] no other debts shall a "woman be compelled to pay." And even if not *acknowledged*, she shall still pay it, if she have received his estate: for, thus says KATYAYUNU:[6] "If a wife be thus addressed by her lord at the point of death, [or just "before a long journey], 'Such a debt must be paid by thee,' she must "pay it, however unwilling, if assets were left in her hands." NARUDU[7]:

CLXXXIV.

"But if a woman who has male issue, [but no several property], desert "her son, and recur to another man, her son alone must pay the whole "debt." This however refers particularly to a son who has got possession of his father's wealth. NARUDU[8]: "A debt contracted before par-

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1—Digest 1st, 17. Cole. on Oblig. 24-26-31-232. Strange's Elem. 1st, 275.

2—Digest 1st, 313. Reports 2d, 203. Cole. p. 28-9. 3—Digest 1st, 308.

4—Digest 1st, 317. Cole. on Oblig. 29. Strange 1st, 276. 5—Digest 1st, 314.

6—Digest 1st, 315. where it is attributed to NARUDU. 7—Digest 1st, 329. 8—Digest 1st, 284.

" tition by an uncle, or a brother, or a mother, for the support of the " family, all the parceners or joint-tenants shall discharge."

21. Should neither [the creditor, nor] his sons nor other relatives, be in existence, the modes of obtaining payment are as declared by NARUDU:[1] " If a creditor of the priestly class be not present but have issue, [the king " shall] cause the debt to be paid [to them]; if he have no issue, to his near " kinsman [*Sukoolyu*]; if he leave none who are near, to those who are distant " [paternal and maternal, *Bundhoo*]: If he leave no heirs, near or distant, " [nor persons connected by sacred studies], the king shall bestow it on " worthy priests; but if none such are present, let him cast it into the " waters: [the debts of other classes, in similar circumstances, he may " seize for himself]." PRUJAPUTI also says: " If there be no distant kins- " men, let it be paid to some twice born man, or be cast into the water: " When cast into the water or into the fire, that money is carried to the " account of [the deceased, or of] his ancestors in a future state." If however an owner should appear to claim money [which is to be so] thrown into the fire, or the like, he shall obtain it.

Heirs of creditors how to recover.

Appropriation of the debt, in default of them.

Reservation.

CHAPTER VI.

OF DEPOSITS,—[*NIKSHEPU.*]

1 NARUDU:[2] " Where a man bails any of his effects to another, in " whom he has confidence, and from whom he has no doubt of receiv- " ing his property again, it is a deposit, which the wise call *Nikshepu*." [3]: When a thing is deposited, under seal, without mentioning its quanti-

Deposits.

CLXXXV.

Of two kinds, undefined, and specified.

1—Digest 1st, 335.

2—Digest 1st, 401. Strange's Elem. 1st, 280.

3—Digest 1st, 403. For "deposits under seal" see Essay on Bailments p. 38. Strange 1st, 282. For a "deposit" see Essay on Bailments, p. 37, note 4.

"ty; if its kind and form be unknown, it is considered as an *Oopunidhi*: "but the wise call a specified deposit *Nikshepu*."

Preservation and restoration of them.

2. BRUHUSPUTI:[1] "The merit of one who preserves a *deposit*, or protects a dependant, is the same with the merit of him who gives golden "vessels or clothes."[2]: "The very thing bailed must be restored to the "very man who bailed it, in the very manner in which it was bailed: "it must *not* be delivered *to his heir*, apparent or presumptive." *Deposit*, a thing bailed. *Not to his heir*, but to the bailer, in his own person. MUNOO[3]: "He who restores not a thing really deposited, and he who "demands what he never bailed, shall both be punished as thieves; or "shall pay a fine equal to the value of the thing claimed."

Rules in case of damage, or loss,

3. BRUHUSPUTI[4]: "Should the bailee suffer the thing bailed to be "destroyed by his negligence, while he keeps his own goods with very "*different care*, or should he refuse to restore it on *demand*, he shall be "compelled to pay [the value of] it with interest." *Different care*, preserving his own property. But if his own property should at the same time suffer injury, through that act of negligence, he is not to blame. YANYUWULKYU:[5] "If the depositary, of his own accord [without the consent "of the owner], *use* the thing deposited, he shall be amerced, and compelled to pay the price of the thing with *profit*." *Use*, make a livelihood by employing it in his worldly transactions for the sake of gain.

Or use of them.

Interest on them. CLXXXVI.

4. *Profit*, interest; of which a distinction is mentioned by KATYAYUNU:[6] "A deposit, the balance of interest, a commodity sold, and the "price of a commodity purchased, not being paid after demand, shall bear "interest at the rate of five in the hundred." MUNOO:[7] "[For the first

And punishment for fraud.

1—Digest 1st, 416. Strange's Elem. 1st, 281.
2—Digest 1st, 415-16. Strange's Elem. 1st, 280.
3—Chap. 8th, v. 191. Digest 1st, 432. q. v.
4—Digest 1st, 420. Strange's Elem. 1st, 278-282. Essay on Bailments p. 6-46.
5—Digest 1st, 428. Strange's Elem. 1st, 283.
6—Digest 1st, 427.
7—Chap. 8th, v. 192. Digest 1st, 432.

" offence], the King should compel a fraudulent depositary, without any " distinction between a deposit under seal or open, to pay a fine equal to " its value."

Exemption for the act of God or the king.

5. BRUHUSPUTI:[1] " If it be destroyed by the act of God or of the " king, together with the goods of the bailee, there is no fault in him." YANYUWULKYU:[2] " But he shall not be compelled to replace that [deposit] " lost by the act of God or the king, or seized by robbers." MUNOO:[3] " But if a depositary, by his own free act, shall deliver a deposit to the " *heir* of a deceased bailer, *he must not be harassed*, either by the King or " by the kinsmen [of the deceased]" *Heir*, a near relation. The sense is this, '*he must not be harassed*, without proof, for the sake of more ' property [than was delivered].'

Redelivery to the heirs of the bailer.

The above rules applied to all species of bailments.

6. The whole of the above laws relating to deposits, are also otherwise collectively applied to other bailments. BRUHUSPUTI:[4] " In the case of " a *deposit for delivery* [*Unvahitum*], a *loan for use* [*Yachitum*], *a bailment* " *with an artist* [*Silpi nyasu*], and a pledge, [*Bundhuku*] the same law is " enacted, and likewise in the case of a person received under protec- " tion [or a dependant]." *A deposit for delivery*, is, when a chattel is given into the hands of another, saying, ' Such an one deposited it with me, and ' I pray you give it to him.' *Loan for use*, ornaments or the like, borrowed for the sake of show at a marriage, or other ceremony. *A bailment with an artist;* what has been openly deposited with goldsmiths, or such persons, to be made into earrings or the like. NARUDU[5]: " This " very law is enacted in the case of loans for use [*Yachitum*], deposits for " delivery [*Unvahitum*], and the like; bailments with an artist, [*Silpi nyasu*][6]

CLXXXVIII.

1—2—Digest 1st, 421-2. Essay on Bailments 104. b. note. Strange 1st, 278-81-294.

3—Chap. 8th, v. 186. Digest 1st, 420.

4—Digest 1st, 410.

5—Digest 1st, 408. Strange's Elem. 1st, 279, Essay on Bailments 86.

6—Essay on Bailments p. 22, note 7, and p. 90-91 " Hiring of work." Strange 1st, 298.

"sealed deposits [1] [*Oopunidhi*], bailments in the form called *Nyasu*, and "*rebailments* [*Prutinyasu*]." *Rebailment*, that is, when the depositary rebails to another the very thing which had been bailed or deposited with him by the original owuer. [2]

Compensation in certain cases of loss by the act of God.

7. Compensation must in some cases be made by the artist, even when the goods bailed have been destroyed by the act of God or the king; for KATYAYUNU says: [3] "If the artist keep the thing bailed, after the time "agreed on for working it [into ornaments and the like], he shall be forced "to pay its value, even though it be destroyed by the act of God."

Rate of valuation for clothes.

8. NARUDU: "An eighth share of the value is lost, of clothes once "washed; when twice washed, a quarter; thrice, a third; and when four "times washed, a half; but after more than half the value is gone, it shall "be valued in order, according to the damage of each quarter share."

Punishment for unauthorized use of them

YANYUWULKYU: "The washerman who wears on his own person, the "clothes of his employer, shall be fined three *punus*. But if they be sold, or "*let out to hire*, or *pledged*, or lent out by him, [he shall be fined] ten "*punus*." *Let out to hire*, what has been given to another for receipt of hire. *Pledged*, put out in pawn.

Rate of valuation for metals.

9. The rules respecting loss incurred in melting *all* metals, except gold, are thus expounded by the SAME AUTHOR: [4] "Gold undergoing the action "of fire is nothing diminished thereby; the loss on silver in a similar "operation is two *punus* per centum; in tin and lead, eight; in copper, "five; and ten in iron." Whenever the loss [in the weight] of [returned metal, whether] silver or other, is greater [than these rates], a fine must be imposed on the goldsmith, or other [workman].

1—Strange's Elem. 1st, 282 Essay on Bailments p. 38. See Digest 1st, 402. YANYUWULKYU.

2—Strange's Elem. 1st, 289-90.

3—Digest 1st, 446. Strange 1st, 293.

4—The following rules are not unknown to the English Law, which has several Statutes to prevent fraud in similar cases. See Tomlins, tit. "Manufacturers." "Gold and silver," "Wire-drawers."

10. A distinction as to the increase in weight of thread, furnished to the workman for the purpose of making up certain clothes and the like, is laid down by the SAME AUTHOR: " Ten *pulus*[1] per centum shall be " the increase in [weight of] cloths made of woollen or cotton thread. " In cloths of middling quality, five *pulus* per centum must be the in- " crease, but in those of fine quality, three *pulus* are declared to be the " standard." In some kinds, decrease is allowable, by the SAME AUTHORITY, who says: " In *embroidered* cloths, as well as those made of hair, a thirtieth " share is declared [to be admissible] as loss [in weight], but there is to " be neither loss nor gain, in the weight of those made of silk, or of the " bark of a tree." *Embroidered*, by describing the *Svustiku*, or other patterns on ready prepared cloths, or other material, with colored thread or the like.

Farther remarks on valuation of manufactures.

CLXXXVIII.

11. In work, when a certain term is specified, and the workman fail to send home the article when demanded within the term, then, even if damage happen to the goods, the workman is not to blame; [2] for the SAME AUTHOR says: " If, having fully considered the nature of the work, a " certain time be fixed for its delivery; in that case, should the owner " demand it when only half finished, and not obtain it, still it shall not be " awarded to him." The exceptions are declared by the SAME AUTHOR: " If, when the term has elapsed, and the work is finished, the workman " should not deliver it when demanded of him, and it be afterwards " damaged, or stolen; the person who would have received the article, shall " obtain the value of it." AND AGAIN: " He who, having received a thing " borrowed for his use, shall not restore it when demanded back, shall " be seized, and by force compelled to give it up; and let a fine be impos- " ed, if he do not then restore it."

Rules regarding contracts for work.

Exceptions.

Punishment of a fraudulent borrower.

1—As. Res. 5th, 91. Wilson. ad verb.

2—Essay on bailments, 90-91. " Hiring of work."

CHAPTER VII.

SALE WITHOUT OWNERSHIP,—[*USWAMI VIKRUYU.*]

Sale without ownership. CLXXXIX.

1. VYASU[1]: "When the goods of another are sold in the owner's ab- "sence, [whether they had been] borrowed for use, bailed for delivery, "deposited under seal, or stolen, it is a sale without ownership." KATYAYUNU:[2] "Let the judge declare void a sale, a gift, or a pledge, made "*without ownership.*" *Without ownership*, is here a past participle, and used separately, to denote the nature of each [act, of sale, gift, or pledge.]

Unauthorised sale, gift, or pledge, void at law.

Circumstances invalidating a purchase.

2. NARUDU[3]: "An open purchaser is clear of imputation, but a pur- "chase in secret is a theft."[4]: "He who buys any thing, from a slave "without authority from his master, from a man not of a good character, in "private, at a very low price, and at an unfit hour, becomes *the accomplice* "*of him.*" *The accomplice of him*, that is, of the thief.

Proof, by the owners of lost property.

3. YANYUWULKYU:[5] "The right to a thing lost [and then found], must "be proved, by the mode of acquisition, or by [evidence of] possession: "otherwise, on failure of proof, a fine equal to a *fifth part* shall be paid "to the king." *Fifth part*, a fifth share of the lost property. When the evidence given by the witnesses adduced by the loser, is contrary to his claim, he must be fined in double the amount of the lost property, for VYASU says,[6]: "If the plaintiff prove not his loss by witnesses, he shall "in that case be compelled to pay double its value; and the purchaser "is entitled to the thing."

Production of the seller indemnifies the purchaser.

4. HE ALSO lays down the course to be pursued by the buyer[7]: "But "if the seller be produced, the purchaser shall by no means be condemn- "ed; for then the law suit must be continued between the owner of the

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1—Digest 1st, 453. Strange's Elem 1st, 259-302-3.
2—Digest 1st, 171.
3—Digest 1st, 512
4—Digest 1st, 491.
5—Digest 1st, 498.
6—Digest 1st, 499.
7—Digest 1st, 502.

" thing lost and the seller." BRUHUSPUTI [1]: " When the seller has been " made appear, and has been condemned in the law-suit, let the judge " cause him to pay the price to the buyer, and a fine to the king; and res- " tore the property to its owner." KATYAYUNU [2]: " Let time be given " to the buyer for the production of the seller, according to the length " of the road." [3]: " If he cannot produce the seller, let him even justify " the purchase; and if the purchase be justified, he shall in no wise be " blamed by the king." " The claimant should first prove his property " by evidence of kinsmen; next, to clear himself, the buyer should prove " a fair purchase by [similar] witnesses, his own kinsmen."

CXC. Time for the purpose to be allowed, and proceedings in default.

5. " Even if the purchaser clearly prove the sale, still the property must " revert to the former owner who lost it." Moreover, MUNOO: [4] " But " if the vender be *not producible*, and the vendee prove the publick sale, " the latter must be dismissed by the king without punishment; and the " former owner, who lost the chattel, may take it back, on paying the " vendee half its value." *Not producible*, not to be pointed out. It alludes to the property being assayed [as it were by the buyer], by [the test of] a public sale.

The first owner recovers in all cases, under certain rules.

6. KATYAYUNU [5]: " The defendant, not clearly proving an open sale " to him, or not pointing out the seller, shall be made to deliver the thing " claimed, and to pay a fine." BRUHUSPUTI [6]: " If a purchase be made " before a public assembly [of traders], with the knowledge of the king's " officers, but from a seller whose *dwelling place* is unknown; or if a claim " be made after the death of the seller, [though known], the owner of the " thing may recover his own property, on paying half the price given; half " the value is lost to each of them: such must be the decision." MUREECHI:

Rules in respect to publicity of sales, and sellers' places of residence.

1—Digest 1st, 479.
2—Digest 1st, 484.
3—Digest 1st, 501.
4—Chap. 8th, v. 202. Digest 1st, 502.
5—Digest 1st, 491.
6—Digest 1st, 508.

" [1]: But if he cannot produce the seller, his *dwelling place* being unknown, " the loss shall be borne equally by the buyer, and by the [former] owner who " had lost the thing." *Dwelling place*, the spot where the seller resides.

Women, cattle, and land. CXCI.

7. NARUDU: " For the possession of women, or cattle, as well as land, " leave must be distinctly *granted*. He who enjoys them without leave, " shall be forced to pay *the hire of* such *enjoyment*." *Granted*, ordered. The *hire of enjoyment*, rent, similar to the hire.

Term for restoration of escheated property,

8. YANYUWULKYU: [2] " The owner of a thing lost, or stolen, which had " been seized by the officers of police or revenue, whether by sea or land, " shall take it, [if claimed] within one year; after that time, the prince " [shall retain it]." As for this text of MUNOO [3]: " Three years let the " king detain the property, of which no owner appears, [after a distinct " proclamation]: the owner, appearing within the three years, may take it; " but, after that term, the king may confiscate it," it is only with reference to property belonging to a *Shrotriyu*, [one conversant in the *Vedus*]. The

with the share to be reserved by the king.

SAME AUTHOR says [4]: " The king may take a sixth part of the property so " detained by him, or a tenth, or a twelfth, remembering the duty of good " kings." Then, in the first year, he must give up the whole of the property. In the second year, let him give it up, after deducting a twelfth share; in the third year, a tenth; in the fourth, a sixth. After that term, the king may confiscate it; this only in case of its owner not appearing after three years: and then it may be appropriated by him only for his expenses;

Exception in the owner's favor.

but if the owner then make his appearance, it must be made good to him, even if expended: Thus says the MITAKSHURA. This however, only if the owner be unknown; for if it be known, 'that such an one went away, ' forgetfully leaving the said property behind,' then he shall get it back, even after three years. Even the prince possesses no right of disposing of it, though he may at the same time take some portion, however small, as his share.

1—Digest 1st, 410. 2—Macnaghten p. 435-6. 3—Chap. 8th, 30. 4—Chap. 8th, 33.

9. YANYUWULKYU propounds the remuneration for trouble of the finder, keeping during one day, the stray animals of another: "The owner "of stray animals must pay four *punus*, if the animal be of the species "with solid hoofs; five *punus* for a human creature; two for every "buffalo, camel, cow, or animal with cloven hoofs; but only a fourth, "for every goat, or sheep." But their food must be paid for besides.

Remuneration of the finder of strays.

CXCII.

10. On the subject of treasure trove, [*Nidhi*] YANYUWULKYU says:[1] "Let the king obtaining unclaimed property [*Nidhi*] give half to *Brahmunus:* but a learned *Brahmunu* may keep the whole, for he is lord of "all." "And the king shall receive a sixth part of unclaimed property "occupied by any other person." "In case of its being discovered without information from the finder, he must be made to pay a fine as well "[as the sovereign's share]." If however, any one prove by mark, measure, or the like, that the property found belongs to himself, in that case let the prince deliver it to him, after giving a twelfth share to the informer, and taking his own sixth. This is stated by MUNOO[2]: "When a man claims "treasure trove, declaring truly, 'This is my own property,' the prince shall "still retain his own sixth share, and also a *twelfth*." This *twelfth*, being that assigned for the informer.

Law in regard to treasure trove.

11. On the subject of property carried off by thieves, the SAME AUTHOR says:[3] "Let property carried off by thieves be restored by the prince to "the owner, of whatever class he may be; if the prince take possession of "it, he partakes of the crime with the thieves." In case he be unable to recover it from the thieves, KRISHNU DVAIPAYUNU [VYASU] says[4]: "Should "the prince be unable to recover stolen property from thieves, he shall "make it good from his own treasury, provided he be powerless." Thus has been expounded the law of sale without ownership.

Restoration of stolen property to the owner.

CXCIII.

1—Macnaghten 437. Digest 1st, 461.

2—Chap. 8th, v. 35. 3—Chap. 8th, v. 40. Macnaghten 437. 4—Macnaghten 437.

CHAPTER VIII.

CONCERNS AMONG PARTNERS,—[*SUMBHOOYU SUMOOTTHANUM.*]

Concerns among partners.

1. NARUDU:[1] "When traders, or others, jointly carry on business, it "is called a 'concern among partners;' a title of judicial procedure."

Mutual obligations.

2. BRUHUSPUTI:[2] "Whatever property a man lends, with the assent "of many, or whatever business he so causes to be performed, is considered "as the act of all the partners." [3]: "They are declared to be competent "arbitrators, and witnesses for each other, in doubtful cases of deceit, "provided they bear no enmity to either party." "Should one of the "partners be justly suspected of fraud, in buying, selling, [and the like], he "may be cleared by ordeal: such is the rule in all controversies."

CXCIV.

Provision for reward and punishment, of partners.

3. YANYUWULKYU:[4] "A man of crooked ways let the other partners "expel without profit; and let a partner unable to act, appoint another "man to act for him."[5]: "If one partner does what the others forbid, "or disapprove, or if he be negligent, [in doing what they allow], and "the [common] property be injured, he shall make it good; but he who "preserves it from [robbers or other] misfortune, shall receive a tenth part "of it [as his reward]"

Order of shares in a partnership.

4. KATYAYUNU[6]: "If four kinds of artisans be jointly employed; "*young apprentices*, *more experienced scholars*, *good artists*, and *teachers*, "they shall receive, in order, one share, two, three, and four shares, of the "pay, or profit." *Young apprentices*, persons learning their trade. *More experienced scholars*, those who are well versed in it. *Good artists*, thoroughly skilled [in every branch]. *Teachers*, persons making new inven-

1—Digest 2d, p. 1.
2—Digest 2d, 66-7
3—Digest 2d, 8-9
4—Digest 2d, 17-24
5—Digest 2d, 12
6—Digest 2d, 78.

tions. Bruhusputi:[1] "Where several men jointly build a house or a "temple, or dig a pool, or make sacred utensils, let the chief workman "receive a double share of the pay." The same author adds[2]: "This "has been ordained by wise legislators for a band of musicians: let him "who marks the time skilfully, take a share and a half; and let the singers "have equal shares"

5. Katyayunu: "If men, [who have joined together in any business], "but are dispersed abroad, meet with imprisonment, then, whatever is paid "for the sake of their liberation, shall be borne by them according to the "share of each."[3] "The law [before] propounded relates to all partners, "whether merchants, husbandmen, robbers, [commissioned in war time], "or artizans, when they have made no special agreement for their shares."

Losses to be borne in common.

CHAPTER IX.

SUBTRACTION OF GIFT,—(*DUTTAPRUDANIKUM*).

1. Narudu:[4] "When a man desires to recover a thing which was "*not duly given*, it is called subtraction of what has been given; [and "this is] a title of administrative justice." *Not duly given*, is a past participle, to denote the quality of the transaction, and signifies 'prohibited.' The same author adds:[5] "In civil affairs, the law of gift is four-fold; "what may, or may not, be given; and what is, or is not, a valid gift."

Subtraction of gift. CXCV,

2. Narudu:[6] "What is bailed for delivery, what is lent for use, a "pledge, joint property, a deposit, a son, a wife, and the whole estate of

Unalienable property.

1—Digest 2d, 80. where it is 'utensils of leather,' *Charmiku*, for *Dharmiku*; some of the Manuscripts had the other word.

2—Digest 2d, 83. 3—Digest 2d, 92. 4—5—Digest 2d, 94-5

6—Digest 2d, 97-8. Reports 1st, 293-4, 2nd, 428. See Chapter 6th, para. 6th.

" a man who has issue living, the Sages have declared unalienable, even " by a man oppressed with grievous calamities, and [of course], what has " been promised to another." Now, as a man has no property in his wife or son, it is only a repetition of the prohibition against their alienation, in conformity to the VEDUS, 'Neither between, nor in the heavens above.' From this, and from the law of YANYUWULKYU:[1] " In distress for [the " maintenance of] the family, [or, the family not opposing the gift, on ac- " count of poverty], property may be given away, except a wife and son." the purport of the above is confirmed by the reservation of a wife and son. The non-existence of property in a wife or son has been already examined in the discussions on property.

Gift of unalienable property are void.

3. In case of their being alienated, not only will the act be untenable in law, but moreover penance also must be performed; for, in treating of this very subject, DUKSHU says:[2] " The man who gives them away is a " fool, and must expiate the sin by penance." So MUNOO:[3] " He who " receives what may not be given, and he who gives away the same, shall " both be punished like thieves, and be both caused to pay the fine of " *Oottum sahusu*."[4]

Alienable property. CXCVI.

4. What things may be given, is declared by PRUHUSPUTI:[5] " A " man may give what remains, after the food and clothing of his family." What must without fail be given, is told by KATYAYUNU:[6] " He who de- " livers not a present which he has promised to a *Brahmun*, shall be com- " pelled to pay it as a debt, and incurs the first amercement."

Gift and sale in what cases prohibited.

5. GOUTUMU:[7] " A man shall not give, even what he has promised, " to a person whom the law declares incapable of receiving." Gift or sale of a livelihood [*Vritti*] are thus forbidden by VYASU[8]: " They who are

1—Digest 2d, 128. Reports 1st, 69. 2d, 428. See Chap. 4th, Section 1st, para. 12.

2—Digest 2d, 110.

3—Not found in his institutes.

4—See Chap. 18th, para 2d,

5—Digest 2d, 131

6—Digest 2d 170.

7—Digest 2d, 172.

8—Digest 2d, 118. Jim. Va 21. Mit. 257. Reports 2d, 428.

" are born, or yet unbegotten, and they are who still in the womb, require
" the means of support: no gift or sale should therefore be made."

6. Narudu [1] thus propounds the distinctions, of gifts valid and void: " Valid gifts are declared to be of seven sorts; void gifts assume sixteen " forms." [2] " They who know the law of gifts, declare, that things once " delivered as the price of goods sold; as wages; for [the] pleasure [of " hearing poets, musicians, or the like]; from natural affection; as an ac- " knowledgment to a benefactor; as a nuptial gift to a bride [or her fa- " mily]; and through *regard*, cannot be resumed." *Regard*, religious purposes. [3]: " What has been given by men agitated with *fear*, *anger*, " lust, *grief*, or [the pain of] an incurable disease; or as a bribe, or in " jest, or *by mistake*, or through any *fraudulent practice*, must be consi- " dered as ungiven: So must any thing given by a minor, [4] an idiot, a " [slave or other] person not his own master; a *diseased man*, one *insane*, " or *intoxicated*, or in consideration of work unperformed." [5]: " But " what shall be *given* ignorantly, to a bad man, called a good one, or for " an illegal act, must be considered as ungiven."

Gifts valid.

Gifts void.

7. *Grief*; pain, misfortune; the interpretation is, afflicted with pain created by fear or other impulse: Whatever has been given by one excited by *fear*, of beating or the like, or by other causes; and in the same manner, what is given with the intention that it may be expended, from *anger* against brothers or other persons [the rightful heirs]: by *mistake*, as, when gold is given by mistake, when the intention was to give silver; *through fraudulent practice*, as if, ' The king were about to give a cow to *Devuduttu*, and it be given to ' some other man, supposed to be the right person by his assuming the dress ' of *Devuduttu*:' *by a diseased man*, one whose mind is unsettled by disease;

Terms of the text defined.

CXCVII.

1—Digest 2d, 95. 2—Digest 2d, 175. 3—Digest 2d, 161. Reports 1st, 31. Colebrooke on Obligations. 26--45--48--50--232--249. 4—For "Minority" see Digest 1st, 293, 2d, 115. Cole. on Oblig. 26. Reports 2d, 57-117--147. An idiot, and an insane person, seem incapable also by English Law, Cole. on Oblig. 227-28. 5—Digest 2d, 200. Cole. on Oblig. 58.

by *one intoxicated* with any substance or liquor which produces drunkenness; or *insane*, by the effects of the air, or from any other cause. *Given*, bestowed; what is given to a person who fails afterwards in the performance of any act, the donor [at the time of giving it] thinking, 'This person will 'do my work'[1]: what has been given to those practising unlawful arts, under an idea that they will perform a lawful act: All these gifts may be reversed.

Such gifts may be resumed.

8. KATYAYUNU[2]: "What has been given by men under the impulse "*of lust*, or anger, or by such as are not their own masters, or by one "diseased, or *deprived of virility*, or inebriated, or of unsound mind, or "*through mistake, or in jest*, may be taken back." *Through lust*, for the sake of seducing another man's wife. *Deprived of virility*, [womanishly] timid. Given *through mistake or in jest*, means as a bribe [*Ootkochu*].

Recovery prohibited, of a bribe once given.

9. [3] "If a bribe be promised for any purpose, it shall by no means be "given, although the consideration be performed." "But if it had at first "been actually given, it shall be restored by forcible means; and a fine "of eleven times as much is ordained by the son of GARGU and by the "son of MUNOO." The nature of a bribe is thus exhibited by the SAME AUTHOR:[4] "Whatever is received for giving information of an [improper] "acquaintance; of a criminal, of a man violating the rules of his class, "or of an adulterer; for producing a man of depraved manners [ready to "commit thefts or other crimes,] or for procuring a man to give false "testimony, That is all denominated [*Ootkochu*] given on an illegal "consideration."

Bribes defined.

CXCVIII. Fraudulent acts to be annulled.

10. MUNOO:[5] "When the Judge discovers a fraudulent pledge, or "sale; a fraudulent gift, and acceptance, or *in whatever other case*

1—This is better explained in the Mit. leaf 19th, page 2d, line 19th, "Further, what is given thus, 'This man "will do this my work,' that is, from hope of a profitable return."

2—Digest 2d, 197. Reports 2d, 117.

3—Digest 2d, 195, KATYAYUNU. Cole. on Oblig. 58. Strange's Elem. 1st, 274.

4—Digest 2d, 194.

5—Chap. 8th, v. 165. Strange's Elem. 1st, 285.

" he detects *fraud*, let him annul the whole transaction." *Fraud*, circumvention. *Or in whatever other case*, that is, in whosever business. The meaning is, the whole of that business in which fraud is detected shall be reversed. KATYAYUNU:[1] " What a man has promised, in health " or in sickness, for a religious purpose, must be given; and if he die " without giving it, his son shall doubtless be compelled to deliver it." For a continuation of this subject, the DVAITU NIRNUYU, written by my *Gooroo*, must be referred to.

Legal promises binding, even on heirs.

CHAPTER X.

OF SERVICE,—[*UBHYOOPETYU SHOOSHROOSHA*].

Service.

CXCIX.

1. NARUDU:[2] " When a man yields not the obedience he has promised, " it is called a breach of promised obedience; which is a title of law." Servants are of three ranks, says BRUHUSPUTI:[3] " The soldier is the " highest of servants; the ploughman is the middlemost; the porter is " declared the lowest, and so is a servant employed in the business of " the household." NARUDU:[4] " He who shall be commissioned for " affairs, or for the superintendance of the family, should be considered " as a commissioned servant; and he is also called a family-servant [in " some instances]."

Servants of three degrees.

2. KATYAYUNU:[5] " BHRIGOO admits the servitude of one who, being " his own master, gives himself, as [the marriage of] a wife [selfgiven is " acknowledged:] slavery should be limited to three classes; never can " a *Brahmunu* become a slave." " The servitude of men of the military,

Slavery of all classes admitted, with exception of Brahmuns.

1—Digest 2d, 96. 2—Digest 2d, 204. 3—Digest 2d, 218.
4—Digest 2d, 220. See Bl. Com. 1st, 426. The English law admits four kinds.
5—Digest 2d, 254. See Bl. Com. 1st, 425, note 1.

" commercial, and servile classes, who have forfeited their independence, " may be in the direct, not in the inverse order, of the classes." NARUDU:[1] " In the inverse order of the classes, slavery is not legal." KATYAYUNU:[2] " Where men of the three twice-born classes forsake religious mendicity, " let the king banish a man of the sacerdotal class, and reduce to slave- " ry a man of the *Kshutriyu* or military tribe, says BHRUGOO." The taking the word *Kshutriyu* or military class, intends the commercial and servile classes also, a part being put for the whole. The mode of banishing a *Brahmun* is thus explained by DUKSHU and NARUDU:[3] " If a man, after " assuming religious mendicity, abide not by his duty, let the king cause " him to be lacerated by the feet of dogs, and immediately banish him."

What kinds of labor allowed and what prohibited.

3. KATYAYUNU:[4] " But even a man of equal class must not reduce " a *Brahmunu* to slavery; yet a mild and learned man may employ in " labor one inferior to himself in those qualities: still let not the highest " twice-born man perform impure work." MUNOO:[5] " Both him of the " military, and him of the commercial class, if distressed for a livelihood, " let some wealthy *Brahmunu* support, obliging them, without harshness, " to discharge their *appropriate duties*." *Appropriate duties*, meaning respectable, and such as are suited to their class.

Illegal enslavement with the punishment awarded for it.

4. KATYAYUNU[6]: " He who seizes a woman of the sacerdotal class, " he who sells her, and he who enslaves a woman of family, impelled by " lust, or causes her to be approached by another, shall be amerced, " and that [enslavement] is null." " The man who treats as a slave the " nurse of an infant child, or a free woman, or the wife of his depen- " dent, incurs the first amercement." VISHNOO:[7] " He who employs

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1—Digest 2d, 253.
2—Digest 2d, 227. There is a variation in the reading of this text.
3—Digest 2d, 227.
4—Digest 2d, 254-5
5—Chap. 8th, v. 411. Strange's Elem. 1st, 185.
6—Digest 2d, 258.
7—Digest 2nd, 257.

" a man of the most elevated class in servile duty, shall be fined in the " highest amercement." KATYAYUNU :[1] " And he who attempts to sell an " obedient female slave [*Bhuktu*][2], though she resist the sale, and though " he be not distressed, but able to subsist, shall pay the first fine."

Slaves enumerated.

5. The distinctions in slaves are laid down by NARUDU[3]: " One born " [of a female slave] in the house [of her master]; one bought; one re- " ceived [by donation]; one inherited [from ancestors]; one maintained " in a famine; and, like him, one pledged by a [former] master; one " relieved from great debt; one made captive in war; [a slave] won in " a stake; one [who has] offered [himself] in this form, ' I am thine;' " an apostate from religious mendicity; [a slave for a] stipulated [time]; " One maintained in consideration of service [*Bhuktu*]; a slave for the " sake of his bride; and one self sold, are fifteeen slaves declared by " the law."

CCI.

Who of them are not capable of emancipation.

6 [4]: " Of those [slaves], the first four are not [of right] released from " slavery: unless they be [emancipated] by the indulgence of their masters, " their servitude is hereditary. That low man, who, being independent, " sells himself, is the vilest of slaves; he also cannot be released from " slavery. "

Exception.

[5] " Among those, whoever rescues his master from imminent " danger of his life, shall be released from slavery, and shall receive the " share of a son." YANYUWULKYU : " He who, having become a *Sunyasi*, " falls from that state, shall remain the slave of the prince during the " rest of his life."

Slavery voidable, on what conditions.

7. NARUDU :[6] " One maintained in a famine is released from servitude " on giving a pair of oxen." " One pledged [is] also [released] when his

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1 –Digest 2d, 258. 2—The word ' *Bhuktu*' means also " serving for maintenance."
3—Digest 2d, 224-25. Colebrooke on Obligations, 26. 4—Digest 2d, 231.
5—Digest 2d, 241. Reports 1st, 372, note. 6—Digest 2d, 243. The last half of the couplet is here omitted; it is as follows : " for what was consumed in a famine, is not discharged by labor [alone]."

X x

" master redeems him, by discharging the debt" [1-2]: " Paying the debt " with interest, a debtor is released from servitude." [3]: " One who offered " himself in this form, 'I am thine'; one made captive in war, and a slave " won in a stake, are emancipated on giving a *substitute* equally capable " of labour." [4]: " A slave for a fixed period is also emancipated, by " fulfilling the stipulated term." [5]: " One maintained in consideration of " service is immediately released on relinquishing his subsistence; and a " slave for the sake of his *bride* is emancipated by divorcing his wife." *Substitute*, a surety, deputy. *Bride*, a female slave.

Slavery in what cases void, ab initio.

8. YANYUWULKYU: [6] " One enslaved by force, and also one sold by " robbers, is released from slavery." NARUDU: [7] " *One not his own* " *master*, who, having given himself [to one man] in this form, 'I am thine,' " goes [to another], does not obtain his wish; the former owner may " reclaim him." *One not his own master*, the slave of another. The word *slave*, used throughout on this subject, being not specially confined to the masculine gender, must therefore be understood as affecting all rules also for female slaves.

CCII.

Reason for emancipating females.

9. A reason for enfranchising female slaves is declared by KATYAYUNU: [8] " If a man approach his own female slave, and she bear him a son, she " must in consideration of her *progeny*, be enfranchised with her child." *Progeny*, offspring; meaning, that she becomes thereby qualified for liberty.

Rite of emancipation.

10. NARUDU [9]: " Let the benevolent man, who desires to emancipate " his own slave, take a vessel of water from his shoulder, and instantly " break it, sprinkling his head with water containing rice and flowers; " and, thrice calling him free, [let the master] dismiss him with his face

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1—Digest 2d, 245. Here again, the last half couplet is omitted: " but if [the creditor] take him in payment, he " becomes a purchased slave." 2—Digest 2d, 245.

3—Digest, 2nd, 246. 4—Digest 2d, 245. This should come in after " Paying the debt with interest," &c.

5—Digest 2d, 247. 6—Digest 2d, 239.

7—Digest 2d, 237. The translation is varied here, to suit the gloss.

8—Digest 2d, 247. 9—Digest 2d, 248.

" towards the east: thenceforward let him be called 'one cherished by " his master's favor;' his food may be eaten, and his favours accepted;' " and he is respected by worthy men."

How any free woman may become a slave.

11. KATYAYUNU [1]: " A free woman, or one who is not a slave [of the " same master; for this word, *Udasi*, may bear either sense], becoming " the bride of a slave, also becomes a slave [to her husband's owner]; for " her husband is her lord, and that lord is subject to a master." " Whatever goods belong to a slave, his master is declared by law to have " dominion over them." [2]

CHAPTER XI.

NON PAYMENT OF WAGES,—[*VETUNADANUM*.]

Non payment of wages.

CCIII.

1. NARUDU: [3] " The rule and the act of payment, and non-payment, " of the wages or hire of servants, are now declared, called in law, Non-" payment of wages or hire."

Rates of wages, when not stipulated.

2. YANYUWULKYU: [4] " He who causes work to be performed without " fixing the wages, shall be compelled by the king to give a tenth part of " the [profit arising from] commerce, cattle, or grain."

According to the work.

3. This relates to light work—For if the work be heavy, BRUHUSPUTI says: [5] " Let the man who guides the ploughshare have a third " or a fifth part [of the grain]." " Let (the ploughman), to whom *food* " *and vesture* are given, take a fifth; and let him who is supported by the

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1—Digest 2d, 252-3. 2—Digest 2d, 252. The last hemistich is here [it would seem fraudulently] omitted: " but that master has no right to the goods which are acquired by public sale." See particularly Celebrooke on Obligations, 30-31-232. 3—Digest 2d, 259.

4-5—Digest 2d, 261-64. See Tomlins, and Burn, tit. " Servants."

" profit (alone), receive a third part of the grain produced." *Food and vesture*, a servant boarded with receipt of food and clothes.

Rules affecting the servant in regard to work.

4. NARUDU:[1] " A servant who refuses to perform the work he has " undertaken, shall be compelled to fulfil his agreement, first paying him " his wages; but, if he persist in his refusal after receiving his wages, " he shall forfeit twice their amount." MUNOO[2]: " That hired servant " or workman, who, not from any disorder but from insolence, fails to " perform his work according to his agreement, shall be fined eight " *ruktikas*.[3] and his wages or hire shall not be paid." HE adds:[4] " Yet, " whether he be sick or well, if the work stipulated be not performed [by " another for him, or by himself], his whole wages are forfeited, though " the work want but a little of being complete."[5]: " But, if he be really " ill, and when restored to health shall perform his work according to his " original bargain, he shall receive his pay even after a very long time."

CCIV.

So VISHNOO:[6] " A servant, [or workman by time], who leaves the " work before the expiration of the full term, shall forfeit the whole price " of his labour, and pay one hundred *punus* to the king."

Rules affecting the master.

5. AGAIN: " If the master dismiss the servant before the full time has " passed, he shall pay him his whole wages, and a hundred *punus* to the " king, unless the servant were in fault." VRIDDHU MUNOO:[7] " A ser-" vant shall pay the full value of what he has lost by mere inattention; twice " the value of what he has lost by gross negligence or *malice*; but he " shall not be forced to pay any thing for what robbers have seized, for " what has been burned, or for what an inundation has *carried away*, [unless " he were himself blameable]." *Malice*, enmity. *Carried away*, swept

Damage or loss by servants, how to be estimated and when made good.

1—Digest 2d, 267.
2—Chap. 8th, 215. Digest 2d, 269.
3—As. Res. 5th, 91.
4—Chap. 8th, 217. Digest 2d, 270.
5—Chap. 8th. 216. Digest 2d, 271.
6—Digest 2d, 271. Reports 2d, 287.
7—Digest 2d, 272.

away. YANYUWULKYU:[1] " He who raises obstacles on solemn occasions " shall pay twice the amount of his wages; one who declines when " on the road [shall be compelled to pay] the seventh part of the wages, " or the fourth part, if he leave him on the way." VRIDDHU MUNOO:[2] " Should a merchant [having hired a servant for a certain journey], sell " his goods by the way, and discharge the servant, his [wages] must be " paid; but the servant shall receive half only of the hire." KATYAYUNU:[3] " And if the goods *be stopped*, or seized on the way, the servant " shall receive wages for so much of the way as has been passed by " him.": [4] " The master, who leaves in the way a tired or sick servant, " without taking care of him in a village for three days, shall pay the " first or lowest amercement." *Be stopped*, be attached by the king's order.

Cases of disputes about wages and discharge.

6. BRUHUSPUTI:[5] " If a servant, by the command of his master, and " for his benefit only, do an improper act, the offence shall be imputed to " the master.": [6] " The master, who pays not the hire of labour after " the work is performed, shall be compelled by the king to pay it, as " well as a proportionate amercement."

Liability of the master.

CCV.

7. NARUDU:[7] " The owner of goods, who hires *carriages or beasts* " of burden, and takes them not, shall be compelled to pay a fourth part " of the hire; or the full amount, if he leave them on the road." *Carriages*, conveyances of all sorts. *Beasts* of burden; horses and other animals, carrying burthens on their own [backs]. KATYAYUNU:[8] " He " who hires, at a fixed price, an elephant, a horse, a bull or cow, an ass, " or a camel, shall be made to pay for the hire of it as long as he delays

Rules relating to hire, of carriages, and beasts of burthen.

1—Digest 2d, 274-75. 2—Digest 2d, 277. 3—Digest 2d, 278.

4—Digest 2d, 279. Moore's Index, Term Reports 1st, 76. Tomlins, and Burn, tit. Servants.

5—Digest 2d, 273. Bl. Com. 1st, 429. " Qui facit per alium facit per se." Tomlins, tit. " Servants."

6—Digest 2d, 279. 7—Digest 2d, 277. q. v. 8—Digest 2d, 283. where it is attributed to NARUDU.

Rules for Landlord and Tenant

" to restore the cattle, having used it according to agreement" NARUDU:[1] " He who dwells in a house which he built on the ground of another man, " and for which he pays *rent*, shall take with him, when he leaves it, " the thatch, the wood, the bricks, and the like. But if he live, without " paying rent, on the ground of another, and there be no agreement, he " shall, when he quits it, give the thatch, the timber, and the bricks which " he has expended, to the landlord." *Rent*, hire.

CHAPTER XII.

BREACH OF COMPACT,—[*SUMVIDU VYUTIKRUMU*].

Breach of Compact.

CCVI.

1. NARUDU:[2] " The general rule, settled among irreligious men " [*Pakhundu*], and among *citizens* [*Naigumu*]. and the *like*, is named a " compact; and the title of law concerning disputes arising thereon, is " called Breach of compact." *Pakhundu*, persons pursuing commerce or the like, [and] deviating from the ordinances of the *Vedus*. *Citizens*, those who do not act contrary [to the *Vedus*]. From the term *the like*, we must include those skilled in the three *Vedus*.

Royal establishments.

2. The part to be taken by the king in these matters is laid down by BRUHUSPUTI:[3] " Assembling *Brahmunus* endued with knowledge of " the *Vedu*, *Shrotriyus* [or learned teachers of the scripture], and priests

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1—Digest 2d, 281. q. v. Strange's Elem. 1st, 293. 2—Digest 2d, 286-92-3.

Ellis's Lectures " *Kooliku Subha* from *Kooliku*, heads of tribes or families, A court composed of " ancient persons of the same *Gotru* as the plaintiff and dependant. The *Gunu*, *Koolu*, and *Kooliku*, " courts took cognizance, especially, of what is termed technically, *Sumv'du vyutikrumum*, all transgres- " sions against the discipline and peculiar customs of the tribe or family; they had, also, jurisdiction, " probably to a limited extent, in civil causes between the members of the tribe or family: but they had " no jurisdiction in criminal cases, and did not, therefore, resemble the domestic courts of the Romans, " in which the Pater-familias presided, and punished the faults of his wife and children even with " death." See Chap. 1st, Sec. 1st, para. 10th. 3—Digest 2d, 288.

" who keep a perpetual fire for oblations [*Ugnihotri*], let the king es-
" tablish them in that place, and assign their subsistence:" " Let him
" grant to them, in his own dominions, houses and land *exempt from taxes*,
" declaring by a written grant, that the royal *dues are remitted*." *Exempt*;
They from whom taxes are not to be taken, are *exempt from taxes*.
Remitted dues: *Remitted*, abandoned: *dues*, the fruits of the earth, and the like; meaning, these [are to be remitted] to them. And the laws for these persons, the *Shrotriyus* and the rest, are declared by YANYUWULKYU:[1] " Duties which are stipulated, or seasonable [for *Samuyiku* may
" bear either sense], or prescribed by the king, and which are not incon-
" sistent with their own [regular] duties, should also be diligently observed
" [by those priests, and enforced by the king]."

Associations enumerated and defined.

3. NARUDU[2]: " Let the king maintain the associations of the *Pakhundu*,
" of the *Naigumu*, of *joint companies* [*Shreni*], of *separate trades* [*Poogu*],
" and of *various tribes* [*Vratu*], and the like, both in a place of difficult
" access, and in a frequented spot." Associations of persons of different casts for the carrying on of one kind of trade or business between them, are *joint companies*. Among them again, those who are associated by different kinds of work, are called *separate trades*. *Various tribes*, are associations of near kinsmen, connexions, or gentile relations; the same which are also denominated *kool*, or family. Of the *Pakhundu* and *Naigumu*, we have before spoken [para. 1]. Associations of all these, from the *Pakhundus* to the *Vratu* inclusive, are all denominated ' companies.'

Punishment for members.

4. The punishment for a departure from the rules laid down among them, is declared by YANYUWULKYU[3]: " Him who embezzles the property
" of the company, and him who violates his engagement, let the king
" banish from the realm, after confiscating all his effects."

1—Digest 2d, 287. 2—Digest 2d, 293. The words of the text are retained, to avoid perplexity: The MUYOOKHU, and MITAKSHURA, vary in their acceptation of the term *Naigumu*, for which " trader" seems the most common meaning, See Chap. 17th, para. 2d, For the three last terms see Chap. 1st, Sec. 1st, para. 10th, and references. 3—Digest 2d, 287. Reports 2d, 437.

CHAPTER XIII.

SECTION I.

RESCISSION OF PURCHASE,—[*KREETANOOSHUYU*].

Rescission of Purchase.

CCVIII.

1. Narudu[1]: "He who is dissatisfied with his purchase, after buying "a commodity for a [just] price, is called a rescinder of purchase, [which "is] a title of judicial procedure."

Term allowed for trial of articles.

2. The limit for examination of an article is fixed by the SAME AUTHOR[2]: "Milch cattle should be examined within three days; beasts of burden, "within five; but the examination of pearls, gems, and coral must be "within seven days; of male slaves, within half a month; of females, "within one month; of all seeds, within ten days; of iron, and wearing "apparel, within one day." Katyayunu:[3] "Rescission of a sale of land "within ten days [is permitted] whether to the buyer or the seller." Bruhusputi[4]: "Within those times, if a blemish be any where discovered "in the commodity purchased, it must be returned to the seller, and the "purchaser shall take back the price."

Excepted cases.

3. Katyayunu[5]: "But an unexamined commodity being bought, "and afterwards proved to have a blemish, it must be returned to its "owner within the limited time, and not otherwise." If he took the article after personal examination, then, says Narudu[6]: "If a man, "having bought for a just price any [cloth or other consumable] commodity "[except seed grain], should suspect that he had made a bad purchase, he "may return it on that very day to the seller, unless it be diminished." "The buyer who returns it on the second day, shall give [the seller] a

1—Digest 2d, 309. See Strange 1st, 301-304, for this and the succeeding Section.

2—Digest 2d, 314-15. Reports 1st, 404-5. 3—The same hemistich, and no more is in the Vmeeramitroduyu, 134 1st, 1st. 4—Digest 2d, 315-6. The second reading of which, '*sunjeyute*,' is followed here. 5—Digest 2d, 316. 6—Digest 2d, 309-10.

" thirtieth part of the price; on the third day, twice as much [or a fifteenth];
" and, after that, it is absolutely his own." NARUDU[1]: " But a mantle,
" that has been worn, and is tattered and soiled, yet is bought with those
" known blemishes, cannot be returned to the seller."

SECTION II.

RESCISSION OF SALE,—[*VIKREEYASUMPRUDANUM*].

Rescission of sale.

CCIX.

1. NARUDU:[2] " When a vendible thing, sold for [a just] price, is not
" delivered to the purchaser, this is called 'Non delivery of a thing sold,'
" a title of judicial procedure."

Rules affecting the vender,

2. YANYUWULKYU:[3] " He who, having received the price of a thing
" sold, delivers not that thing to the buyer, shall be compelled to deliver
" it together with interest; or, among those who trade to foreign coun-
" tries, with the *foreign profit*." *Foreign*, of another country. Its *profit*,
that is, the profit on a commodity, the produce of a foreign country.
THE SAME AUTHOR:[4] " Should a commodity sold, but not delivered on
" demand [with tender of payment], be injured by the act of God or of
" the king, the loss shall fall on the vender."

and the vendee.

3. BUT AGAIN[5]: " And if a loss arise by the fault of the vendee, on
" him alone shall it fall." NARUDU[6]: " But if a vendee refuse to accept
" the commodity which he has bought, when it is offered, the vender
" commits no offence if he sell it to another."

1—2—Digest 2d, 317. 3—Digest 2d, 319-20.
4—Digest 2d, 324. 5—Digest 2d, 324. Reports 1st, 404. The last hemistich of one text is here tacked on to the end of the other. 6—Digest 2d, 327. Reports 1st, 404.

Sales void.

4. YANYUWULKYU says:[1] "That which has been sold by a drunken, "or by an insane man; or for a base price; also that which has been sold "by one not independent, and by an idiot, must be given up and restored "by the purchaser." All these rules must be understood, as referring to a contract made by the seller to this effect: 'The price being paid, I will give it to you alone, and to no other,' [as is evident] from the following text of NARUDU[2]: "This rule has been declared for vendible commodities, of "which the price has been paid [or tendered]; but where it has not been "paid [or tendered], there is no injury to the buyer by [delaying the delivery] "unless there have been a special agreement [as to the times of delivery "and payment]."

Rules for decision.

Punishment of fraud.

5. On the subject of selling a damaged article, YANYUWULKYU says[3]: "The dishonest man, who sells the commodity knowing it's blemish, [but "not disclosing it], shall pay double the price of it [to the vendee], and a "fine of equal amount [to the king]."

CHAPTER XIV.

DISPUTES BETWEEN MASTER AND HERDSMEN,–[*SWAMIPALU VIVADU*].

Disputes between master and herdsmen. CCXI.

Punishment for faults.

1. When damage occurs to kine, or other animals, through the fault of their keeper, YANYUWULKYU says:[4] "On the loss [of a beast] by the "fault of the herdsman, the fine ordained for him is thirteen *punus* and "a half; and [he shall pay] *the value* [of the beast] to its owner." *The value*, of the cow, or whatever animal it may be.

1—This is a text of BRUHUSPUTI, according to the VEERMITRODUYU [136—1st, 5th,] and is attributed also to him in the Digest 2d, 328, or at least one very like it. Reports 2d, 118.

2—Digest 2d, 319.

3—Digest 2d, 325, where it is attributed to BRUHUSPUTI.

4—Digest 2d, 343. and the commentary.

2. The mode of certifying the death of any animal, is thus laid down by MUNOO:[1] "When cattle die, let him carry to his master their ears, "their hides, their tails, the skin below their navels, their tendons, and "the liquor exuding from their foreheads: let him also point out their "*marks*." *Marks*, their horns, or other known marks, according to MUDOUNU.

Mode of certifying deaths in the herd.

3. The portion of ground [to be set apart] to serve as pasturage for kine, and the like, is defined by YANYUWULKYU[2]: "Let a *space* be left "between village and village, in breadth four hundred cubits; let it be "eight hundred cubits round a town, and sixteen hundred round a city." *Space* [*Purinahu*], land appropriated for pasturage of cattle and the like.[3] In the same sense also, a similar word [*Puriharu*] is used by MUNOO:[4] "On all sides of a village or small town, let a *space* [*Puriharu*] be left for "pasture, four hundred cubits." Some author has defined a village, as a place where several artificers and husbandmen are found: a town [*Khurwutu*], as a place surrounded with a strong thorn hedge.

Pasture lands of townships.

4. When the grain or property of another is eaten by cattle, fines must be paid by their owner, according to this ordinance of YANYUWULKYU[5]: "[The owner of] a female buffalo, doing damage to grain, shall be fined "eight *mashus*[6]; of a cow, half that [amercement]; and of a goat or sheep, "half [again] of this amercement." "For cattle eating and lying down in "the field, the fine is double the amercement mentioned; it is also the "same, if they trespass on *preserved lands*, and the fine for an ass or a "camel, is the same with that for a female buffalo."[7]; "As much grain as "shall be destroyed, so much produce shall be [paid] to the husbandmen;

Loss by trespass to be made good by the owner, with a fine for the offence.

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1—Chap. 8th, v. 234. Digest 2d, 347. There is a variation in the reading here, *unka*, marks, for *unga*, *limbs*.
2—Digest 2d, 346. 3—In practice, this is well known, the ground so set apart being termed *Kotra* in Goojurat.
4—Chap. 8th, v. 237. Digest 2d, 347-8.
5—Digest 2d, 361-2
6—As Res 5th, 91. Digest 2nd, 358.
7—Digest 2d, 366.

" the herdsman shall be scourged; but the owner of the cattle incurs the " fine already declared." *Preserved lands*, a place for collecting or preserving grass, wood, or the like.

Exceptions, with the reason for them.

5. An exception to this is stated by OOSHUNA: [1] " Kine are not liable " to fine for trespass on jubilees, and they are equally exempt at the season " of obsequies." VYASU: " O lion [lord] of kings, he whose property " has been snatched away and enjoyed by a *Brahmun*, or by a very indigent " relation, or by kine, receives greater reward, than he would obtain from " the *Vajupeyu* sacrifice." OOSHUNA [2]: " Neither ancestors, nor deities, " taste the offering of that man who demands compensation for corn " destroyed by cows."

CHAPTER XV.

BOUNDARY DISPUTES,—[*SEEMA VIVADU.*]

Boundary disputes. CCXIII.

Mode of defining boundaries.

1. BRUHUSPUTI tells the means of knowing boundaries: " The following substances, cow-dung, bone, husks of grain, charcoal, large stones, " potsherds, sand, bricks, cows'-hair, cotton [3], bones, and ashes, having been placed in vessels, shall be deposited under ground at the " extremities of the boundary."

Requisite witnesses.

2. YANYUWULKYU here shews the nature of the witnesses required: " Men inhabiting a neighbouring village [*Samunta*], or that in which the " disputed ground is situated, being in number either four, eight, or ten, " having put on a chaplet of red flowers, and a red dress, and taking

1—Digest 2d, 372 where certain other animals are altogether exempted. 2—Digest 2d, 354.

3—Or cotton seeds, according to the VEERMITRODUYU [139 2d, 10th,] which has been consulted for the translation of the other terms: a text of the SAME AUTHOR is there found, but transposed and read differently: " Stones, bones, Cow's hair, husks of grain, ashes, potsherds, cowdung, bricks, charcoal, gravel, sand."

" some of the earth [on their heads], shall point out the true boundary." Narudu: " A single man shall not determine a [disputed] boundary, " even if he be worthy of confidence; for the weighty nature of this " business requires that such fact be settled by many." Bruhusputi: " In default of the marks for knowing the boundary, even a single man, " who is virtuous and upright, and mutually agreed upon by both par- " ties, having put on a chaplet of red flowers, and red clothes, and taking " some earth on his head, and having fasted, may point out the boundary."

One witness inadmissible, except under certain circumstances and limitations.

3. Katyayunu: " On three occasions, the act of God or the king " is to be looked for: in walking over a boundary, undergoing the or- " deal of holy water, and likewise in swearing by holy feet; [in the first] " within six weeks; [in the second] a fortnight; and [in the third], within " seven days."

Divination to be attended to.

4. Munoo: [1] " Veracious witnesses who give evidence as the law re- " quires, are absolved from their sins; but such, as give it unjustly, shall " each be fined two hundred *punus*." Narudu: " Now if neighbouring " villagers have spoken what is not true in deciding a [contested] boun- " dary, they shall be fined, all separately, in the middling amercement, by " the king." Katyayunu: " Where many are assembled [for this pur- " pose], and they do not give an unanimous verdict [or testimony], whe- " ther from fear or hope of reward, they shall be made to pay the highest " amercement." [2]

Punishment of false evidence.

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5. Yanyuwulkyu: " In default of assessors, or of marks for distin- " guishing it, the king ought of his own accord to define the boundary." Munoo: [3] " If the boundary cannot be [otherwise] ascertained, let the king,

Proceedings in default of evidence.

1—Chap. 8th, 257.

2—In the Veermitroduyu [141 : 2d, 14th] this is elucidated by another hemistich of the same author: " If it be so delivered from want of knowledge, let the boundary " be examined afresh; but if there be a contradiction in what they have delivered, they shall be fined " in the highest amercement."

3—Chap. 8th, 265.

" knowing what is just, [that is, without partiality, and] consulting the " future benefit of both parties, mark a boundline between their lands: " this is a settled law."

Possession, held to be a title to certain conveniences.

6. THE SAME AUTHOR says:[1] " Reckoning from the time of entry, " even as a house-door, a shop [or market], and *other places*, may " have been enjoyed by any one, according to that time and manner shall " he possess them, and shall not be removed." KATYAYUNU also: " *An* " *enclosure; a drain; a projection*, and small apertures, let them not " stop up, or interfere with; let him who stops a permanent watercourse " or the scite of a house, receive punishment." *An enclosure*, the foundation of a wall. *A drain*, a road for the exit of water. *A projection*, is, according to MUDUNU, ' a place for sitting in, made of wood or other ' materials, not touching the ground, but built out, from a house or other ' place.' In some copies they read [*dhoomu nishkasu*], ' a passage for ' smoke, [a chimney]' instead of [*bhrumu nishkasu*] ' a drain, and a ' projection.' It then would mean, small apertures, as bull's eyes, or the like, for the purpose of letting out smoke. By the phrase *other places*, we must understand, the walls of other people, and the like.

Prohibition against erection of nuisances.

7. THE SAME AUTHOR says: " From and after the date of entry [or " possession], such things are not at any time to be made, neither shall " they make a passage for sight, nor a water course, into the habitation " of another." BRUHUSPUTI: " Never let a *necessary*, a fire-place [or heap]; " a sink, or dirty water, [or a vessel of it], be at any time placed *very*

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" *near* to the house of another." *A necessary*, the place for voiding impurities. *Very near*, in close contact. KATYAYUNU: " Places set apart " for depositing urine, fœces, and water; a fire-place and a sink [or pit],

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1 – It is not found in MUNOO's Institutes, and the VEERMITRODUYU attributes it, by implication, to BRUHUSPUTI.

" let them situate, when they make them, at the distance of two cubits
" from the houses of other people."

Definition of thoroughfare, and highway.

8. Bruhusputi: " That [road], by which men and animals have come " and gone unprevented, is called a highway [*Sunsurunum*]: it is not to be " shut up by any one whomsoever." Narudu: " Let them not stop up a " thoroughfare [or junction of four roads, *Chutooshputhu*], a place dedica- " ted to the gods, or the king's highway, [*Raju margu*], by [making there] " a place for sweepings, a pit, a drain, a heap, [of rubbish] or the like." Katyayunu: " That place through which all [sorts of] people are con- " stantly moving, is a thoroughfare [*Chutooshputhu*]: that road which has " not at any time been stopped up, is called the king's highway."

Fine for committing nuisances in them.

9. Bruhusputi: " Let one *mashiku* be the fine of him, who there " makes either a stoppage [with carts], or a pit [or sink], or a plantation " of trees, and likewise for him who wilfully voids ordure there." Munoo:[1] " He, who shall drop his ordure on the king's highway, except in case of " necessity, shall pay two *punus*, and immediately remove the filth." Katyayunu: " Let him who defiles a pond, a royal garden, or a holy " piece of water, with ordure, be made to remove the defilement, and be " punished in the lowest amercement."

Fine for transgressing boundaries, &c.

10. Yanyuwulkyu: " For altering the divisions [of joint lands], as " well as for transgressing the boundary [of others], and taking away a " man's land, let the fine be, in order, the lowest, the highest, and the " middling, scale."

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and for seizure by intimidation.

11. Munoo:[2] " He who, by means of intimidation, shall possess him- " self of a house, a pool, a field, or a garden, shall be fined five hundred " *punus*; but only two hundred, if he trespassed through ignorance of " the right."

1—Chap 9th, 282. 2—Chap. 8th, 264.

Rights in the produce of boundaries defined.

12. KATYAYUNU:[1] "The fruit and flowers of trees produced upon "the boundary between two fields, are declared to be joint property, per- "taining in common to the masters of the two fields." KATYAYUNU:[2] "But where the branches of trees growing in one man's field, be spread "out over that of another, then he shall be considered as the owner [of "their produce], over whose field they are so situated." YANYUWUL-KYU: "If a man, not even giving notice to the owner, set up a bridge "upon [another person's] field, the enjoyment of it's profits is the right "of the landlord, or, on failure of him, of the king."

Erection of bridges allowed on the ground of another.

13. THE SAME AUTHOR says: "A bridge[3] which diffuses general "benefits [must not be put a stop to] where the inconvenience is slight; "and a well, which takes off from the land of another, if the ground [so "lost] is small, and the supply of water great." 'Must not be put a stop to,' should here be added. NARUDU also: "But a bridge in the "middle of another man's field must not be objected to, if the benefit be "great, and the damage small, and a profit be expected above the loss."

Repair of them gives no title.

NARUDU: "If any one, without asking the owner, repair a bridge built "long before but fallen into decay,[4], that person in such case shall not "enjoy the profits of it." VYASU: "If any one, having taken a field [in "hire] shall neither till it himself nor cause it to be tilled, he shall be "made to pay to the owner of the land the vegetable *products* of that "field, and a fine equal to it to the king."[5] *Products*, profits suitable to the powers of the land.

Punishment for neglecting to cultivate land held under lease.

1—2—Halhed 188. Strange's Elem. 1st, 203. 3—Mit. 65. 1st.—Bridges [*Setoo*] are declared by NARUDU to be of two kinds; "Bridges of two sorts are known: the one open, and the other confined: "when for the passage of water, it is open; that which is closed, is for the stoppage [of water]."

4—In the MITAKSHURA, it is read *Oottsunnum*; in the VEERMITRODUYU, *Ootpunnum*; the former of which is followed here. 5—See Wilks's Mysore vol. 1st, p. 128.

CHAPTER XVI.

SECTION I.

ABUSE,—[VAKPAROOSHYUM].

1. BRUHUSPUTI: "That is reckoned the first scale in abusive language "where, *without any thing* specific, disgraceful accusation of country, "town, or family, is made." "False accusation, of connexion with the "sister, or the mother, of another; [or] of a sin in the minor degree, is "called the second degree of wordy abuse, by those skilled in the "*Shastru*." "Accusation of [using] forbidden food, or drink; the char- "ging with a mortal sin; and *spreading abroad* very deep secrets, is "termed the highest misuse of language." *Without any thing*, means, 'mere mention made, but without specifying any thing so as to identify the thing [or person] meant.' *Spreading abroad*, divulging.

Abuse, defined to be of three degrees.

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2. VISHNOO: "For loud abuse of one of the same class, a man is "to be fined twelve *punus*." In another SMRITI, it is said:[1] "When a "couple of persons stand mutually charged with the offence of abuse, "and no difference is observable [in their respective guilt], the punish- "ment [the guardian of good behaviour] of both shall be equal." NARU-DU: "He who commences an abusive quarrel, shall most certainly "be held to be blameable, and also he who in retort is guilty of such "improper conduct; but the man who first began is the principal "offender."

Punishment of it in various cases.

The aggressor to receive most.

3. MUNOO:[2] "A *Soldier* defaming a *priest*, shall be fined a hundred

Difference of punishment varies

1—Macnaghten 418. 2—Chap. 8th, 267. Ellis's Lectures. "We had occasion to observe the misappre- "hension which prevailed with respect to the exemption of *Brahmuns* from capital punishment. This is "one only of the innumerable misconceptions of their situation in Hindoo Society, which has obtained "among foreign nations from the earliest times. Not the least gross of these, is that which ascribes to

as the class of the parties.

" *punus;* a *merchant*, [thus offending], an hundred and fifty, or two hun- " dred: but [for such an offence] a *mechanick* or servile man shall be " whipped." BRUHUSPUTI: " The punishment of a *Brahmun* for giving " abuse to a *Kshutriyu*, shall be fifty *punus;* thus, if to a *Vaishyu*, the half " of fifty; if to a *Shoodru*, thirteen and a half." With respect to a *Shoodru*, the SAME AUTHOR says: " He who makes known the ordi- " nances of religion, and he who joins in reading the *Vedus*, or is abusive " towards *Brahmuns*, shall be punished by having his tongue cut out."

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Punishment for abuse of venerable persons.

4. MUNOO:[1] " He shall be fined a hundred [*punus*], who defames his " mother, his father, his wife, his *brother*, his father in law, or his " preceptor; and he who gives not his preceptor the way." *Brother*, his elder brother, because of his companionship with the father, and the rest. According to the MITAKSHURA, and other authorities, punishment [should follow abuse] against a mother and the rest, even though they deserved it; of a wife, provided she be not in fault.

Threats of actual injury.

5. YANYUWULKYU: " Let punishment to the amount of an hundred " *punus*, be inflicted for threatened injury to the arm, neck, eyes, or thigh; " and the half of it, for [the like injury to] the foot, nose, ears, the " hand, or the like. If this [threat] be uttered by a powerless person, " he need only be fined ten *punus*, but if he have the power to perform

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" the whole body a Sacerdotal character; and which Sir W. Jones has unaccountably countenanced, by " translating, in the Institutes of MUNOO, the words used to designate an individual of the first caste " [*Brahmunu* and *Vipruh*] " priest," and the feminine of them [*Brahmuna* and *Vipra*] " priestess." " The latter mistake is particularly remarkable, as the wives of *Brahmuns*, though they assist in the pri- " vate devotions of their family, not only never officiate as priestesses, but have no part in the public " ceremonies of religion, except as spectators." It may be further remarked, that the second and third tribes, of *Kshutriyu* and *Vaishyu*, which he translates *Soldier*, and *Merchant*, no longer exist in a pure state, and that the *Soldiers* and *Merchants* of the present day are, in the eye of their own law, lower than the real *Shoodru*, being of the *Vurnu Shunkuru*, or Mixed classes.

1—Chap. 8th, 275. where the reading is '*tunuyum*, son,' instead of '*Srusoorum*, fatherinlaw,' as here, and in the VEERMITRODUYU, and MITAKSHURA.

" his threat, let him be made to give security for the safety of him " [threatened]."

6. THE SAME AUTHOR says: " Any one abusing another thus, 'I have " criminal connexion with thy mother, or thy sister,' let the king oblige " to pay a fine of twenty-five *punus*. The highest punishment [shall be " the portion] for him, who abuses a *Brahmun* learned in the three *Vedus*, " the king, or the gods." NARUDU: " A man calling a degraded man " fallen; or taxing a thief with being such again, commits no fault: but " if falsely, he shall obtain double blame." YANYUWULKYU: " He, who " contemptuously heaps ridiculous compliments, whether true, or untrue, " or ludicrously distorted, upon persons wanting a limb, or diseased in " their organs, shall be fined thirteen *punus* and a half."

Indecent abuse, &c.

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7. OOSHUNA: " He who confesses, 'Such a thing was said by me from " ignorance, carelessness, envy, or affection; I will not say so again,' may " be fairly considered deserving of only half the fine."

Mitigation in cases of confession.

SECTION II.

ASSAULT,—[DUNDU PAROOSHYUM].

1. NARUDU: " Injury inflicted upon the limbs of another, with the " hand, foot, weapons, or other thing, and defiling him with ashes, or the " like, is called actual affray."

Assault, defined.

2. BRUHUSPUTI: " The man who, having received abuse, retorts abuse; " or, being beaten, returns the blow; and he who beats one doing him some " wrong, does by no means thereby become liable to punishment."

Self defence permitted.

3. KATYAYUNU: " BHRUGOO has ordained, that the highest punishment " shall be inflicted for cutting off an ear, a nose, a foot, the eyes, tongue, the " penis, or a hand; the middling degree for breaking [or wounding] any of

Degrees of assault defined.

" them." YANYUWULKYU: " A fine of ten *punus*, is recorded as the " punishment, for touching any one with ashes, mud, or dust; double that

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" sum is demanded, for touching him with excrement, or *the heel*, or spittle; " these fines to be doubled, if the fault be committed against those of equal " as well as superior cast, or against the wife of another; if the [sufferers] " be of inferior cast, let half the [specified] fine be levied; but if committed " through inadvertence, drunkenness, or the like, it is not punishable." *The heel*, the hinder part of the foot. KATYAYUNU: " The fine is declared to " be fourfold, when the vomited contents of the stomach, or urine, or fœces, " or the like, are thrown on the lower extremities; six-fold if upon the trunk " itself; but eight-fold, if upon the head."

Offences enumerated, with the fines for them.

4. YANYUWULKYU: " For holding up [threateningly] a hand or a foot, " the punishment shall be [in order] ten, and twenty, *punus:* the middle " scale of punishment is declared for all classes, for mutual raising of " weapons." THE SAME AUTHOR says: " The punishment of ten *punus* " shall be inflicted, for violent pulling of the foot, the hair, the clothes, or " the hand, of another; an hundred, for painfully pulling a man about, " tightly binding his clothes about him, and trampling him under foot." " The man who causes *pain* [to another], short of drawing blood, with a stick " or the like, shall be fined thirty two *punus;* double that sum, if blood be " produced." The meaning of *pain*, and the rest is, that an hundred *punus* shall be levied for [a complicated assault, both] tying a man in his clothes, violently pulling him about, and trampling him under foot. THE SAME AUTHOR says: " The middle amercement shall be imposed, for breaking a " hand, a foot, or a tooth; for tearing the ears or the nose; for laying open " a sore, and likewise for beating one till he seems dead: the limb with " which any one gives pain to *Brahmuns*, if not himself a *Brahmun*, shall " be cut off. The lowest amercement, for raising [that limb, or a weapon] " against them, but the half of it, for only touching [weapons] with hurtful

" intent." MUNOO[1]: " With whatever member a low-born man shall assault " or hurt a superior, even that member of his must be slit, [or cut more or " less in proportion to the injury]: this is an ordinance of MUNOO." " He " who raises his hand, or a staff, against another, shall have his hand " cut." KATYAYUNU: " Just as the fines are laid down for abusive lan- " guage between men in the regular or inverse order of the classes, even so " shall the fines for violent affray be imposed, according to their order [in " rank]."

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5. VISHNOO: " The fine for every one of many persons beating one, " shall, for each, be double of that declared [for a single offender]."

Double fine for many assaulting one.

6. KATYAYUNU: In case of injury to the body, or organs, of another, " at whatever amount they determine the fine, the very same sum shall " be given, *to cause pleasure*, and *for the cure*, [as fixed] by *learned men*." *To cause pleasure*, to make satisfaction to the sufferer. *The cure*, the price of medicines, and the like. By *learned men*, is meant: ' That must be paid, which is settled by those skilled in the matter.'

Damages awarded in proportion to the injury.

7. With reference to beating animals, and the like, YANYUWULKYU says: " The fine for giving pain to, or drawing blood from, as well as cutting " off the branches [as horns &c.] of inferior animals, shall be from two " *punus*, ascending in order: [of the injury]." " For cutting off their or- " gans of generation, and for causing their death, the second amercement " shall be paid, and their value also; a double punishment shall be im- " posed in the case of superior animals, when illtreated as above de- " scribed."

Cruelty to animals punishable.

8. In respect of damage to trees, says MUNOO:[2] " According to the " use and value of all great trees, must a fine be set for injuring them; " this is an established rule."

As well as damage to trees.

1—Chap. 8th, vs. 279-80.   2—Chap. 8th, v. 285.

CHAPTER XVII.

ROBBERY, –[*STEYUM*]

Robbery defined; of three degrees.

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1. Narudu specifies three degrees, of things liable to be stolen: "All "earthen-ware utensils; a stool, a bedstead; [all articles made of] bone, "[or ivory], wood, or leather; as well as grass, and the like; leguminous "grains, and grain ready dressed; are termed inferior articles." "Cloth "made from any material except silk, and likewise all cattle, with the ex-"ception of kine; all metals except gold, and rice of all sorts; barley and "such like [grain], are termed articles of middling estimation." "Gold, "precious stones, silken clothes, women, men, kine, elephants, horses, and "the property of the gods, the *Brahmuns*, and the king, are the first "rate articles."

Notorious rogues enumerated.

2. The same author here first exhibits [the nature] of an open thief: "*Traders*, [*naigumu*]; [1] *physicians*; *gamesters*; *assessors*; persons taking "*bribes*, [and] *cheats*; *fortune tellers* [and] professional *prostitutes*; [2] per-"sons skilled in the arts; *counterfeits*, and those who perform unlawful acts; "*arbitrators*, [*Mudhyusthu*], [3] *false witnesses*, and likewise those who gain "a living by fraudulent practices, are all of them open thieves." In ano-ther Smriti also we find: "Wherever manifest cheats, persons having "recourse to false weights and measures; those taking bribes, or employ-"ing fraud; impostors; bad women; as well as counterfeits, and those "who live by shewing fortunes, are found, all these, and the like, may be "known for manifest thieves."

1—See Chap. 12th, para. 3d. The word is here translated in conformity to the succeeding text of Bruhusputi, evidently intended by our author to furnish the gloss on it. 2—The word '*Kshoodrah*' for which the Veermitroduyu reads *Bhudrah*, is translated thus, as in the masculine plural it is unmeaning; in the subsequent text of Bruhusputi, as read in the Veermitroduyu, it bears the same sense, supported by the succeeding text, 'bad women.' 3—See Chap. 1st, Sec. 1st.

3. Bruhusputi: That *trader*, who shall sell an article, concealing its "blemish, mixing it up and making it over again, shall be made to give "[an article of] twice its value, and likewise pay a fine equal to the "same." "That *physician* who, being ignorant of medicine or its invo- "cations,[1] or unacquainted with the nature of disease, yet levies money "from those who are sick, deserves to be punished even as a thief. "Those who *play* with false dice; professional *prostitutes*; those who "seize the king's dues; *astrologers*, as well as *cheats*, are deserving of "punishment as being all denominated swindlers." "*Assessors* pro- "nouncing an unjust decision; even so also, those who live by *bribery*; "and those who *cheat* persons trusting them, are every one of them to "be banished." "Those who, not understanding their subject, shall "pretend to a knowledge of *astrology*, or shall foretell prodigies, and like- "wise expound auspicious omens or the like to mankind, must be strictly "kept down." "Those men, who exhibit themselves [as religious men- "dicants] with a staff, deer's skin, and other requisite accompaniments,[2] "and, by these means *deceiving* men, kill them, shall be put to death by "the king's people." "Those who, making up a thing of very small "value, raise a great price upon it, and they who impose upon other peo- "ple, deserve to be punished in proportion to the amount." "They who "make false gold, precious stones, coral, or the like, shall be made to "give back their price to the person who has bought them, and to pay "double the amount as a fine to the king." "Persons, acting as *arbi- "trators* [*Mudhyusthu*], who become corrupt through favor, gain, or other "[motive], and those *witnesses* who depose contrary to the truth, shall "be made to pay double [the sum depending] as a fine."

The above terms explained by other texts.

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1—Perhaps "consultation, advice," would be a better term. The higher classes, when taking medicine, use very appropriate *muntrus*, or formulas, evincing their reliance on the Deity and their medical advisers' skill.

2—Or, as some copies read, "adorned with jewels and fine clothes."

Secret thieves.

4. VYASU: "When persons are found walking about at night time in "a secret manner, furnished with implements [of theft] or the like, and "whose place of abode is not known, they shall be recognized as secret "thieves." The SAME AUTHOR adds: "Pick-pockets [or shop-lifters]; [1] "burglars or housebreakers breaking *a hole;* highwaymen [*Punthumooshu*] "who rob travellers; those who open bundles [*Grunthi mockuku*], and "stealers of women, men, kine, horses, and other cattle, are all reckoned "but nine different kinds of thieves." *A hole,* [*Sundhi*] in a wall, or the like.

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Punishments enacted for them.

5. YANYUWULKYU: "Let shop-lifters, and those who open bundles, "be both made to lose *the tongs* of their hand; for the second offence, they "shall be deprived of a hand or foot." *The tongs,* the forefinger and thumb. "The robbers, who having broken a hole [2], commit a robbery at "night, them shall the king, having cut off both hands, cause to be impaled "with a very sharp stake." BRUHUSPUTI: "In like manner, let him "cause highwaymen to be hanged, tied by the neck to a tree. He shall "cause the *fingers* of package-openers to be cut off, for apprehension on "the first offence; on a second [apprehension], both hands or feet; for "the third, they are deserving of *Wudhu.*" *Fingers,* the forefinger and thumb.

Responsibility of the country, in certain cases.

6. NARUDU specifies certain distinctions in the flight of thieves, taking the stolen property with them: "A thief shall by every effort be seized "by him in whose district [or premises] he may be furtively concealed. "Else, if the trace or footmark [3] be not carried out [of the premises], he "shall be made to pay the amount of the loss. If the trace be carried "forward from that [district], yet have not fallen elsewhere, then they shall

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1—*Ootkshepuku.* The MITAKSHURA defines it to be, "those who pilfer by throwing up clothes and the like," hooks for instance. The VEERMITRODUYU in commenting on the text above, says, "those who, having "satisfied themselves of the ignorance of the owner, get the property out of his possession, by snatching "it from him."

2—*Sundhi,* a hole made in a wall for felonious entry. *Sundhi chour,* a burglar, a house breaker.

3—*Pudum;* the same which is called "*pagla*" in Goojurat to this day; the custom is in the Dukhun equally well known, under the name of *Magu.* Reports 2d, 354.

"cause the neighbourhood [1], the road-keepers, or even those entrusted "with the care of the district, to pay the loss." YANYUWULKYU also: "The village shall pay, when within its own limits, or wherever the trace "goes; the five-village community, if beyond one *kroshu;* or again, that of "ten villages."

Punishment for kidnapping, and for stealing cattle, &c.

7. On the subject of kidnapping women, VYASU says: "The woman-"stealer shall be burned [2] on an iron bedstead, with a fire of grass; the "manstealer shall be set up where four roads meet, after having his hands "and feet cut off." BRUHUSPUTI: "Having cut off the nose of a stealer of "kine, and bound him, let them plunge him into the water." [3] NARUDU: "*Wudhu* shall be inflicted on him, who robs another of his all, or who car-"ries off a married woman, or a virgin." "BRUHUSPUTI directs that they "confiscate *all* [the wealth] of those who carry off a horse, an elephant, "or metals." *All;* the wealth, must be here supplied. VYASU: "Let them "cut off, with a very sharp instrument, half the foot of him who carries "off [common] animals." NARUDU: "For stealing animals of a superior "kind, let his punishment be that of the highest scale, the middle scale for "the middle class of animals, and the first [or lowest] scale for such an "act in respect of mean animals."

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And for robbery of valuables and grain.

8. MUNOO: [4] "Corporal punishment [*wudhu*] shall be inflicted on him, "who steals more than ten *Koombhus* [5] of grain; for less he must be fined

1—*Samunta;* the same word occurred in the same sense, at Chapter 15th, para. 2d.

2—The VEERMITRODUYU reads, "in the ordeal of hot iron, with the fire in his hand."

3—So the VEERMITRODUYU, according to which this text was inserted in the Errata.

4—Chap. 8th, v. 320. KOOLLOOKU, whose commentary Sir W. Jones follows, divides *Wudhu* into three degrees; *Murunu*, Capital; *Chhedunu*, membral, involving loss of limb; and *Turunu*, Corporal. As our law admits not infliction of the second, [though a commutation of it into imprisonment is awarded, where the punishment itself is enjoined by the Hindoo Law], *Wudhu* must be taken to mean, either Capital, or Corporal punishment, as the case may be. It is used in the latter sense in verse 320, in the former in verse 323. Indeed it is more than hinted, in the commentary on verse 320, that either of the three kinds is to be applied, according to the circumstances of the robbery; for instance, the first, if a *Brahmun* be the person robbed, &c.

5—See As. Res. 5th, 96-7—Wilson, ad verb.

" eleven times as much, and shall pay to the owner the amount of " his property." One *Koombhu* is twenty *Prusthus*. HE AGAIN says [1]: " For stealing the most precious gems [as diamonds or rubies], the " thief deserves capital punishment [*wudhu*]." NARUDU: " Capital " punishment [*Wudhu*] shall be inflicted for stealing more than a hundred " of [any of the following things], gold and silver pieces, or the like; " fine clothes, and likewise all precious stones." MUNOO [2]: " For " stealing gold or silver, or the like, or costly apparel: or more than fifty " *pulus*, it is enacted that a hand shall be amputated; for less, the king " shall set a fine eleven times as much as the value."

Certain limitations to capital punishment.

9. YANYUWULKYU: " Having set a mark on a *Brahmun* found guilty " of such offence, let him be banished from that his native country." MUNOO [3]: " [Criminals of] all the classes, having performed an expiation " as ordained by law, shall not be marked on the forehead, but be con- " demned to pay the highest fine." YANYUWULKYU also: " Having " caused restitution of the stolen property, they shall cause the thieves " to be put to death, by different modes of *Wudhu*."

Aiders and abettors.

10. NARUDU: " They who grant food and an *asylum* [opportunity] " to thieves flying before pursuit, and they who wink at their escape, though " able to stop them, are also their accomplices in the offence." And therefore, sharers in their punishment.

CHAPTER XVIII.

HEINOUS OFFENCES,—[*SAHUSUM*].

Violent acts

1. Their nature is declared by NARUDU: " Whatever act is by strength " performed, by one inflamed with power, [*bulu*] is denominated [*Sahusu*]

CCXXVII.

1—Chapter 8th, 323. 2—Chapter 8th, 321-2. 3—Chapter 9th, v. 240.

" violence, oppression; for strength [*Suhus*, whence *Sahusu*] is also termed
" power [*bulu*]."

2. BRUHUSPUTI: " Killing a human being, robbery, handling the per-
" son of another man's wife, and *both species* of assault, are the four
" kinds of violence." *Both species*, that is, abuse and affray.[1] NARUDU: " Spoiling fruits, roots, water, and such things, and agricultural
" implements, or throwing them away, treading them under foot, or the
" like, is declared to be the first degree of violence [*pruthumu sahusu*]."
" [Misusing] in the very same way, clothes, animals, food, drink, and
" household utensils, is denounced as the middle degree of violence [*mudh-
" yumu sahusu*]." " Malicious practice with poison, weapons, or the
" like; the handling of another man's wife, and all other encompassing
" of life, is called the highest degree of violence [*oottumu sahusu*]."

defined and enumerated.

3. YANYUWULKYU: " The king shall apprehend sacrilegious house-
" breakers [*Bundigrahu*]; likewise those who steal horses, and elephants,
" as well as violent murderers, and cause them to be empaled on a
" stake." BRUHUSPUTI: " Having carefully ascertained who are notori-
" ous murderers, and likewise murderers in secret, and having seized all
" their effects, they are to be killed by different modes of death."

Capital punishment for certain offenders.

4. THE SAME AUTHOR says: " When many persons, filled with rage,
" beat [to death] one single person, then he who strikes him on a vital part,
" is declred to be the murderer."[2]

Punishment in case of mobs.

5. KATYAYUNU: " He who commences the quarrel, or takes a part in
" it, as well as he who points out the road; he who gives an asylum, and
" he who furnishes weapons, or gives food, to evil doers; so even, he who
" advised for battle, he who instigated his destruction; one concerned in

Aiders and abettors. CCXXVIII.

1—Chapter 16th, Sections 1st and 2d.

2—In most of the copies, this text ran in a plural sense, but in some it was singular, and the Pundits were determined on the adoption of that number, by finding it so in the VEERMITRODUYU.

" the work of deceit; he who speaks harm [of the deceased]; who rejoices " [with the murderers]; or prevents not the injury, though possessing the " power, are all of them actors in the deed: They shall cause a suitable " punishment to be awarded, proportioned to the power [of each to suffer]."

Exceptions in favor of *Brahmuns*, in respect to capital punishment.

6. NARUDU lays down distinctions in the punishment of *Brahmunus:* " From there being no difference [in the degrees of guilt], the same " measure of punishment is laid down for all. That of *Brahmunus* must " be short of *Wudhu;* a *Brahmun* is not liable to undergo *Wudhu:* his " punishment shall be, shaving of thr head, banishment from the city, a " plain mark upon his forehead, and parading upon an ass. *Wudhu* must " not be inflicted on a *Brahmun*, even if guilty of felony [*Atutayi*]." For, according to SOOMUNTOO:[1] " There is no blame for putting to death " persons acting feloniously, excepting kine, and *Brahmuns.*" KATYAYUNU: " BHRUGOO says, if among felons, there be one of the highest class, and " engaged in austerities and reading the *Vedus*, then, in that case alone, " *Wudhu* shall not be inflicted. *Wudhu* is for sinners who are of low " class."

Felons enumerated.

7. THE SAME AUTHOR declares who are felons [*Atutayi*]:[2] " He who " uses a sword, poison, or fire, as well as he who raises his hand in impre- " cation, and he who kills by magic: and also a spy against the king; he " who enjoys a married woman contrary to rule;[3] who is diligent in picking " out holes [in another man's coat]: all these persons, and the like of them, " are to be known as felons." And VUSISHTHU likewise says:[4] " An " incendiary, and a poisoner, one who offensively handles weapons, who " robs the wealth of another, as well as he who steals his land, or his wife, " are all six of them felons."

1—2—Macnaghten 423.

3—Explained to mean " Rape," in a subsequent text, para. 14th.

4—Macnaghten 423.

8. However, the text of MUNOO[1]: "Let a man without hesitation slay "another, [if he cannot otherwise escape], who assails him with intent to "murder [*Atutayi*], *whether* young or old, or his preceptor, or a *Brahmun* "deeply versed in the scripture:" and this of KATYAYUNU: "To him "who shall kill a felon coming with intent to take his life, *even* though he "[the felon] have gone through the *Vedus* [*Vedantu*], the sin of the death "of a *Brahmun* does not attach:" [require consideration]. The words *whether* [*va*], and *even* [*upi*], relate to the death of all felons with the exception of *Brahmuns*; because the introduction of the word *Brahmun* is for the sake of giving greater force to the law [by an extreme example, *Kaimootiku nyayu*]. So, in the MITAKSHURA it is said: "A *Brahmun* felon is liable to "*Wudhu*; how then [*kimoota*] shall any other man [escape]." And we find the same, both from this text of GALUVU: "He who kills one, the "highest *Brahmun*, feloniously attacking him with a raised weapon, does "not render himself a *Brahmun's* murderer; did he not kill him, he would "really be guilty of *Brahmun's* murder"[2]: and this of BRUHUSPUTI: "He "who kills a felon, versed in the *Vedus* and come of a good family, does "not commit heinous murder; did he not kill him, he would be guilty."

Examination of the 'inviolability of *Brahmuns*,

CCXXIX,

9. The following interpretation is given in the SMRITI CHUNDRIKA: 'That 'the Brahmun who comes with a felonious intention of putting another to 'death, alone deserves *Wudhu*; not the Brahmun who seizes the land or 'wife, or other [property] of another. But *Kshutriyus*, or other persons 'guilty of the abovementioned crimes, are deserving of *Wudhu*'[3]. And this is the right [interpretation], because of the necessity for opposing the vague

Doctrine of the SMRITI CHUNDRIKA stated, and approved,

1—Chapter 6th, 350, See General note, "SMRITI," at the end, 2—The expression *Bhroom ha*, [lit 'who procures abortion'] is explained in the VEERMITRODUYU, "as having reference to a very superior *Brahmun*," [*Oottumu Brahmuna visheshu*] 3—See note to Chap, 16th, Sec 1st, para 3d,

E e e

[or general] sense of the aforementioned rules, of SOOMUNTOO and KATYAYUNU, by the more explicit expression of ' one feloniously attempting the ' life of another,' suggested by these last quoted texts, of MUNOO, KATYAYUNU, GALUVU, and BRUHUSPUTI.

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Subject continued.

10. However, what BRUHUSPUTI says: " He who shall refrain from " killing a man of superior class, a performer of austere acts of devotion " and reader of the *Vedus*, though liable to *Wudhu* for felonious acts, " shall obtain the benefit of one *Ushwumedhu*," has reference only to a felon distinct from one seeking the man's own life.

11. AND AGAIN, the killing of a *Brahmun* feloniously seeking the life of another, is forbidden in this age of the world [by the text]: " There must " be no killing, even in a just quarrel [1], of a chief *Brahmun*, though seeking " one's life." which prohibition would be evaded, if *Wudhu* were inflicted according to law; and though all the things now forbidden in the *Kuli*, or present, age, had previously received the sanction of [our ancient] enactments, yet: " The learned have declared these *laws* abrogated in the *Kuli* " age." And in all the commentaries there is a clear line drawn, from the acceptation of the word *laws*. Therefore, in the present age of the world, a *Brahmun* feloniously seeking the life of another is not liable to *Wudhu*. But for other [offences] a *Brahmun* felon, is not in any *Yoogu* liable to *Wudhu;* whilst all other felonious criminals, whether *Kshutriyu* or other class, are in all ages of the world liable to *Wudhu* [2].

Estimation of articles subject to robbery.

12. BRUHUSPUTI declares the punishment for stealing articles of low, middling, and great value: " So, even he who *shall destroy* or carry " off implements of husbandry, or flowers, roots, or fruits, is deserving

1—*Dhurmu yooddhe;* this seems to be the same term which Sir W. Jones has translated " religious war," in his general note at the end of MUNOO, SMRITI 2d; the text appears the same.

2—*Nirnuyu Sindhoo* Section 3d,

" of punishment, above a hundred *punus*, according to his offence. In " like manner, he who shall destroy or steal [inferior] animals, clothes, " grain, liquids, as well as household utensils, shall be punished by a " fine, not less than two hundred *punus*. If women, men, kine, gold, " precious stones, as well as the property of the gods, or of *Brahmuns*, " and that of *females;* [and similar] costly articles, his fine shall be " equal to the value of the stolen property. *Or*, double its amount [even] " may be thought equitable by the king, according to the person; *or*, " *the thief* may be [even] put to death, with a view to the prevention " of [bad example from] his society." *Female*, a woman's property. The word, *Or*, has the meaning of 'even'. This text belongs to the Chapter on Heinous Offences, according to MUDUNU, [and not to that on Robbery] from the literal meaning of the words '*shall destroy*' and '*thief*,' which come together in this place.

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13. YANYUWULKYU shews the punishment for the original instigator of heinous offences: " He who causes the commission of violence, shall be " made to pay a *double* fine; he also who, by saying, 'I will give [such " a reward]', causes its prepetration, shall be made to pay *quadruple* its " amount." That is, *double* or *quadruple*, in proportion to the fine imposed on the actual perpetrator of it.

Instigators, and their punishment.

14. The punishment for him who by force enjoys a virtuous *Brahmuni*, is thus declared by MUNOO:[1] " A *Brahmun* who carnally knows a guarded " woman without her free will, must be fined a thousand [*punus*]." If the crime be committed against such a woman, by a man of the *Kshutriyu*, or other class, says BRUHUSPUTI: " If any one by force *enjoy* [a woman], " then let the king seize the whole of his property, and having cut off his " penis and scrotum, afterwards cause him to be carried round [the town] " upon an ass." *Enjoy*, have connexion, with the lawful wife of another

Rape.

1—Chapter 8th, 378.

man. The following punishment for forcible enjoyment of a married woman, whether of lower or higher cast, [than himself] or of equal class, by a man of the *Kshutriyu* or other tribe, is denounced by KATYAYUNU: " When a man has obtained enjoyment of a woman, by seizure of her " person, infliction of *Wudhu* is in that case established, because the act " is a transgressing [of the admitted order] of enjoyment."

Restraints on a ravished woman.

CCXXXII.

15. THE SAME AUTHOR says: " Let the woman who has thus unwil- " lingly been enjoyed, be kept shut up in the house, having her person " slovenly, sleeping on the ground, and furnished only with a single ball " of food [or with what nature requires]." HE ADDS: " She who has " been enjoyed by a man of low cast is to be put away, or suffer *Wudhu*." Here *Wudhu* must be understood, only in case of her consenting to the guilty act.

Punishment of the three distinctions of heinous offences.

16. NARUDU thus declares the punishment of the lowest, middling, and highest crimes [*Sahusu*]: " The punishment of it must be in proportion to " the crime, but, in the first [or lowest] degree, not less than one hundred " [*punus*]. By those well versed in the law, that of the middle class of " crimes, is shewn to be not less than five hundred *punus*. The fine for " the highest scale of crime must be nothing short of one thousand [*punus*]. " *Wudhu*, confiscation of every thing [the criminal is worth], banishment " from the city, with branding, and amputation of his limbs, these are the " punishments declared for *Oottumu sahusu*, or the highest degree of crime."

To be inflicted by the prince alone.

17. The command for inflicting *Wudhu*, amputation, and the other punishments named, however, is the province of the prince, and of no other, since to him alone pertains the right to inflict punishment.

CHAPTER XIX.

COMMERCE WITH WOMEN,—[*STREESUNGRUHUNUM*].

Commerce with women.

CCXXXIII

1. The punishment for *forcible* enjoyment of another man's wife, as an act of a heinous nature, has been before declared.[1] BRUHUSPUTI declares [that for] the *fraudulent* enjoyment of a woman of similar cast, being the wife of another man: "If a man by fraud enjoy a woman, he shall be "punished by *full confiscation*, and, having been branded with the mark "of the pudendum muliebre, let him be afterwards banished from the city." *Full confiscation*, that is, confiscation of his all. And this punishment is meant in regard to women of equal class. If she be of lower, the half of it is proper; but in the case of a woman of superior cast, *Wudhu* is enjoined: and accordingly THE SAME AUTHOR says: "The half of that punishment, "which is to be inflicted for connexion with a woman of equal class, is the "due of him who enjoys a woman of lower class. But for connexion with "a woman of more exalted cast, let the man be put to death."

Punishment of fraud in such cases.

2. The several punishments of adultery, with women of the three comparative degrees, lower, equal, and higher [than the adulterer], are laid down by THE SAME AUTHOR: "The punishment for adultery in each of these "three orders, must be applied to each in its degree, the lowest punish- "ment [for the lowest rank], the middling, [for the middling], and the "highest [for the highest]; for forcible enjoyment in secret, let the middling "degree be inflicted."

Punishment of adultery, considered with regard to class.

3. The punishment for a man of bad life, who converses with the wife of another man, is laid down by MUNOO:[2] "A man, before noted for such "an offence, who converses in secret with the wife of another, shall pay

Criminal conversation,

1—Chapter 18th, para. 14.

2 Chapter 8th, 354.

" the first of the three usual amercements." The punishment for mutual conversation between a man and woman, who have been both forbidden by the father or other relative, is declared by YANYUWULKYU: " Let a woman, " forbidden so to act, be fined one hundred *punus*, but let the punishment " for the man be double that sum; but where the prohibition has been " given to both, then let their punishment be the same as is inflicted for " adultery." The first half of this couplet has reference to prohibition communicated to one of the parties only; and the last half, to a communication of it to both.

CCXXXIV.

and adultery in general.

4. YANYUWULKYU declares the punishment for adultery brought about through the mutual desire of both: " [For adultery] between persons of " equal cast, let the highest fine be imposed: But the middling scale for " the same crime with a woman of lower cast; when the woman's cast " is higher, let the man suffer *Wudhu*, and the woman have her ears or " other [limbs] cut off."

Punishment of women in all cases, is half of that laid down for males.

5. KATYAYUNU: " And in all offences, whatever sum of money is laid " down as the punishment of it in a man, the half of it must a woman pay " who is guilty of the same; where *Wudhu* is denounced against a man, " let a woman's person be mutilated."

Fornication, considered with reference to class.

6. But for connexion with a *Brahmuni* of loose life, thus says MUNOO: [1] " But only five hundred [*punus*], if he knew her with her free consent." This relates to a woman of equal cast. On the subject of connexion with women of lower cast, and loose morals, the SAME AUTHOR says: [2] " A " *Brahmunu* shall pay five hundred *punus*, if he connect himself criminally " with an unguarded woman of the *Vaishyu*, *Rajunyu* [or *Kshutriyu*], or " *Shoodru* class; and a thousand, [for such a connexion with] a woman of

1—Chapter 8th. 378, of which the first couplet, as relating to guarded women, was quoted. Chap. 18th, para. 14 and is repeated here below.

2—Chapter 8th, 385.

" the lowest cast [*Untyuju*]." However this text: [1] " A *Brahmun* who car_
" nally knows a guarded woman without her free will, must be fined a
" thousand *punus*," especially intends a virtuous woman. The punishment of a *Shoodru* for connexion with a woman of higher cast, is declared by MUNOO: [2] " A *Shoodru* having an adulterous connexion with a woman
" of a twice born class, whether guarded at home or unguarded, [shall thus
" be punished]: if she was unguarded, he shall lose the part [offending], and
" his whole substance; if guarded, [and a *Brahmuni*], every thing, even his
" life." If a *Shoodru* have criminal connexion with an unguarded *Brahmuni*, his parts must be cut off, and all his property be confiscated; but, if she be guarded, *Wudhu* is further incurred. It means, that for adultery with a guarded woman, his whole property shall be confiscated, and he be considered deserving of *Wudhu*.

CCXXXV.

7. GOUTUMU: " For adultery with the wife of his preceptor, let a
" man's parts be taken away, and all his property be seized; if the woman
" be guarded, let him further suffer *Wudhu*." MUNOO: " But, if a
" *Vaishyu* or *Purthivu* [man of the royal class, *Kshutriyu*] commit adulte-
" ry with a *Brahmuni* whom her husband guards not at home, the king
" shall only fine the *Vaishyu* five hundred, and the *Kshutriyu* a thousand."
THE SAME AUTHOR says: [3] " Both of them, however, if they commit
" that offence with a *Brahmuni* not only guarded [but eminent for good
" qualities], shall be punished like *Shoodrus*, or be burned in a fire of dry
" grass or reeds." AND AGAIN: [4] " If a *Vaishyu* converse criminally with
" a guarded woman of the *Kshutriyu*, or a *Kshutriyu* with one of the *Vaishyu*
" class, they both deserve *the same* punishment as in the case of an
" unguarded *Brahmuni*." Namely, *the same* fine which is denounced against connexion with an unguarded *Brahmuni*. VUSISHTHU: " If a man of the

1—Chapter 8th, 378. 2—Chapter 8th, 374. 3—Chapter 8th, 377. 4—Chapter 8th, 382.

" royal class [*Rajunyu*] have criminal connexion with a *Brahmuni* woman, " let him be enclosed with bundles of reeds, and be consumed with fire: " Even thus do to a *Vaishyu*, if he have connexion with a woman of the " royal class, and likewise to a *Shoodru*, if he commit the crime with a " woman of the royal, or of the *Vaishyu*, class."

Incest, defined.

8. NARUDU: " He who has criminal connexion with any one of the " following women, a mother's sister, a mother in law; a maternal uncle's " wife; a father's sister; the respective wives, of a paternal uncle, a " friend, and a pupil; a sister, her friend; a daughter in law, a daughter, " and the wife of one's preceptor; every woman descended from the same " family, any woman dependant on his protection, the king's wife, a female " devotee, a nurse, a woman who preserves her conjugal duty inviolate; " and any woman of the supreme class, is said to be as guilty as the " violator of his religious preceptor's bed. No punishment short of cutting " off his parts, is laid down for such a crime as this." YANYUWULKYU also: " A man who has connexion with his father's sister, or his mother's " sister; with his maternal uncle's wife, and also with his daughter- " in law, with his step-mother, his sister; either with his preceptor's " daughter or his preceptor's wife, or with his own daughter, is as the " violator of his preceptor's bed: having cut off his privy parts, let *Wudhu* " be his portion; and the same for the woman, if she were consenting to " the act."

CCXXXVI.

Exception in regard to punishment of Brahmuns.

9. This punishment however is not to be inflicted on *Brahmuns*: For, among the texts of BRUHUSPUTI, on the liability of *Brahmunus*, we find: " Let the king impose such a mark as will render his punishment memo- " rable, upon a man when caught in the act of improperly handling another " man's wife, and then banish him." If one, not a *Brahmun*, have criminal " intercourse with such women, he is deserving of *Wudhu*, even in the " capital degree [*Pranantu*]."

10. SHUNKHU and LIKHITU say: "With whatever member any particular offence is committed, let that very member be cut off, whoever "the offender be, unless a *Brahmunu*." YANYUWULKYU declares the punishment of a *Brahmun* having connexion with a slave or the like: "The "man who has carnal intercourse with slaves *kept close*, as well as those "entertained as mistresses, shall be made to pay, even though their con-"nexion be [in other cases] permitted, a fine amounting to fifty *punus*." *Kept close*, that is, those forbidden by their master to have commerce with other men.

Fornication, in what cases permitted and when punishable.

11. NARUDU: "Any woman, *not a Brahmuni*, who is *self willed*, "[*Svairini*], or a downright prostitute, or a slave, and one *without a home*, "may have connexion with a man of higher cast than herself, but not with "one of inferior. But, if such a woman be kept as a mistress, [the per-"son intriguing with her] is blameworthy, equally as if she were ano-"ther man's wife." *Not a Brahmuni*, whose nature is denoted by the adjective *self willed*, which means, 'one, her own mistress, who goes with other men.' *Without a home*, a woman who has left her family, and goes with other men. YANYUWULKYU: "If a man have connexion with [a "woman of] the lowest casts [*untyu*], let him be branded with the mark "of some disgraceful thing [1], and banished the country. If a *Shoodru* "[act in such manner], he shall be similarly marked [2]; but, if a man of "vile cast have connexion with a woman of high class, *Wudhu* [shall be "his portion]."

CCXXXVII.

Seduction of a man by a woman punishable.

12. The punishment for connexion wilfully effected by a woman, is thus declared by NARUDU: "That female who, going to a man's house, excites "his desire by handling him, or the like, and so causes him to lie with

1—*Koobundhu*; or. "of a headless trunk," if *Kubundu* be the correct reading.

2—The Mit. reads, "*Un-tycrusyat*," shall become even of that lowest cast." and it has here been altered, perhaps, without cause, as some of the manuscripts had the same.

" her, should be punished, as declared by sages, in half that prescribed " for a man [guilty of like conduct." para. 4]. YUMU defines the punishment for women of the *Brahmun* and the other classes, who have criminal connexion with a *Shoodru*, or other [man of lower class]: " If a " *Brahmuni* woman, overpowered by desire, submit herself to the em- " braces of a *Vrishulu*, let the king cause her to be devoured with dogs, " at the place of the *slaughterers*. But if a *Brahmuni* woman submit her- " self to the embraces, either of a *Vaishyu*, or of a *Kshutriyu*, her head shall " be shaved, and she shall be carried round upon an ass." *Vrishulu*, a *Shoodru*. *Slaughterers*, venders of flesh or fowl; expressing [that she is to be cast out to the dogs] at the slaughter houses. And this punishment is for continued [or excessive] attachment to such person, according to the CHUNDRIKA.

Proof of adultery defined.

13. YANYUWULKYU points out the means of ascertaining the act of adultery: [1] " In cases of criminal conversation, the man may be seized, if " engaged in playing with the hair of a woman, the wife of another, or at " the moment of discovering love marks [as bites or scratches], and likewise " upon the confession *of both*." From the expression, *of both*, it cannot, on the confession of only one of the parties, be pronounced that criminal intercourse has taken place.

Punishment of slander; and of unnatural crimes.

14. YANYUWULKYU propounds slander: " He who asserts blemishes " against an [unmarried] woman, shall pay an hundred [*punus*]. But for " a false accusation, two hundred; for connexion with a beast, he shall pay " an hundred, and even the middle scale of punishment, for connexion with " a *distressed* woman, or a cow." Moreover: " If a man enjoy a woman " in an improper part [2], or a male, and if he perform natural evacuations " before [a woman], he shall be fined the sum of twenty-four *punus*; and

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1—Strange's Elem. 1st, 45. 2d, 86-7.

2—Uyonou, non in vulva; ut, in ore, aut alio [modo obscœno]," secund. comm. Mit.

" likewise for connexion with a female devotee." *Distressed* [1], any one in pain, even the man's own wife. We must understand [also], that he who shall perform his evacuations or the like [dirty act] before the face of a woman [shall be punished].

CHAPTER XX.

DUTIES OF MAN AND WIFE,—[*STREE POON DHURMU*].

Duties of the husband: CCXXXIX

1. Now, the punishment for a husband who puts away a wife possessed of good qualities, is declared: " The husband who puts away a wife that " is obedient, not evil speaking, dexterous [at her duties], virtuous, and " maintaining her conjugal vow, must be kept [in his duty to her] by a fine " from the king." YANYUWULKYU: [2] " He who forsakes a wife, though " obedient to his commands, diligent in household management, mother " of an excellent son, and speaking kindly, shall be compelled to pay the " third part [of his wealth]; or, if poor, to provide a maintenance for that " wife."

and of the wife.

2. THE SAME AUTHOR says, with respect to women: " Let the bidding of their husbands be performed by wives; this is the chief duty of " a woman. Even if he be accused of deadly sin, yet let her wait until " he be purified from it."

CHAPTER XXI.

GAMBLING,—[*DYOOTU SUMAHVUYUM*].

Gambling, when permitted. CCXL.

1. YANYUWULKYU: " [Payment of] that which has been won *publicly*, " *in an assembly of gamesters*, in the presence of the *master of a gaming house*,

1—The Mit reads " with a low cast woman ;"

2—Digest 2d, 240. Reports 1st, 63.

" and when the king's share has been paid, shall be enforced: but not " otherwise." *Publicly*, not in secret. *In an assembly of gamesters*, in a gaming house. *Master of a gaming house*, one made, by the king, superintendant of gambling. The interpretation should be thus: 'Whatever has been won [whilst playing] in comformity to these regulations, the prince must cause to be paid, but nothing else.'

Punishment of fraud.

2. THE SAME AUTHOR specifies the punishment for one guilty of fraud in gambling: " The man convicted of [making or using] false dice, or of " [safely undergoing] ordeal, by *deceit*, shall be banished, after branding, " by the king." *Deceit*, fraud. MUNOO [1] declares the punishment for gambling without permission from the king: " Let the king punish [corpo- " rally at discretion], both the gamester, and the keeper of a gaming house, " whether they play with inanimate, or animate things; and *Shoodrus* who " adopt *the marks of the twiceborn*." *The marks of the twiceborn*, wearing their string, reading the *Vedus*, or the like.

Gambling, of two kinds.

3. YANYUWULKYU thus assimilates the laws of gambling [*Dyootum*] and matches [*sumahvuyu*]: " These very rules for gambling [*dyootu*] must " also be applied in *live gambling* matches." *Live gambling*, [*Prani dyoote*] denoting the nature of the match [*Sumahvuye*].

CHAPTER XXII.

SUNDRIES,—[*PRUKEERNUKUM*].

Sundries. CCXLI.

1. YANYUWULKYU: " He who either omits, or adds any thing, in writ- " ing the king's edicts, or who allows him that has robbed another of his " wife to escape, shall suffer the highest amercement: he who does injury

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1--Chapter 9th, 224.

" to a twice-born man, by feeding him with *things not fit to be tasted,* shall " receive the punishment of the highest scale of crime; that of the middle " scale for [a like injury to] a *Kshutriyu;* the lowest, if to a *Vaishyu,* and " the half [of that again] to one born a *Shoodru.*" *Things not fit to be tasted,* are, intoxicating liquors, wine, excrement, or the like. THE SAME author adds: " Let him who deals in adulterated gold as pure, and him " who sells *unclean meat,* have their body made less [by a limb], and " undergo the highest punishment." *Unclean meat,* the flesh of cows, or the like. From the use of the particle *and,* we must understand loss of limb; according to the MITAKSHURA. Again: " The master of any " animal also, whether armed with teeth or horns, who, having the power, " still fails to relieve any one in pain from it [when attacked]; shall suffer " the punishment of the middle scale of crime; but double, if the sufferer " likewise *made a noise* beforehand." *Making a noise,* that is, crying out. MUNOO:[1] " For killing a man, a fine equal to that for theft shall be " instantly set; half that amount for large brute animals, as for a bull or " cow, an elephant, a camel or a horse. For killing very young cattle, the " fine shall be two hundred [*punus*]; and fifty, for elegant quadrupeds, or " beautiful birds [as antelopes, parrots, and the like]. For an ass, a goat " or a sheep, the fine must be five silver *mashikus*[2], and one *mashu* for " killing a dog, or a boar." This fine must be understood, to be over and above payment of the value of the animal killed.

CCXLII.

YANYUWULKYU: " He who charges any roaming gallant as a thief, " shall be made to pay fifty *punus* as a punishment; if he *sordidly take* " money from him, and let him go, then eight times its amount is ordained " as the fine." *Sordidly take,* receive. " Let the king banish, after cutting " out his tongue, that man who utters *evil wishes* against the king, as well

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1—Chapter 8th, vs. 296-97-98

2—As. Res. 5th, 91.

" as him who openly *abuses* him, and him who divulges his secret counsels."
Evil wishes, for his death or the like. *Abuses*, by saying, 'May thy reign not last,' or the like. MUNOO [1]: " Men who rob the king's treasure, or " obstinately oppose his commands, let him destroy by various modes of " just punishment; and those who encourage his enemies." YANYUWULKYU: " The punishment of him who sells what has touched a dead body, and " likewise of him who strikes his preceptor, and of him who seats himself " in the king's carriage, or throne, is that of the highest scale of crime." *What has touched a dead body*, funeral clothes, or the like. THE SAME AUTHOR says: " The punishment of him who puts out both the eyes of another, " as well as of him who performs acts hostile to the king, and of him " who, being a *Shoodru*, gains a livelihood by the office of a *Brahmun*, shall " be eight hundred *punus*." The meaning is, 'him who puts out both the eyes of another, him who does an act prohibited by the king, and that *Shoodru* who lives by the profession of a *Brahmun*' But, according to the MITAKSHURA, 'If he assume the *Brahminical* string for the purpose of partaking of food at a *shraddhu*, he shall have a line, resembling the real string, imprinted on his body with a red hot rod.'

CCXLIII.

Standard for valuation of fines,

THE SAME AUTHOR propounds the punishment for those who make [decrees] contrary to justice: " An unjust decision must be revised by the " king, and he must, as a punishment, impose a fine double [the loser's " fee [2] on] the amount litigated, upon the assessors, together with him " who gained [in the first instance]." " If a man, though he have justly " lost his cause, yet cherish in his mind this idea, 'I am not conquered', " and again come into Court, let him again lose his cause, and be made to " pay a double fine."

In every part of this work, where the amount of fine is left unstated,

1—Chapter 9th, 275. 2—Chapter 5th, Section 4 para. 8.

it must be considered as meaning the number of *punus*. This *punu*, again, is the copper one, equal in weight to the *Kurshu* [of 16 *Mashus*], whence the copper *punu* is denominated *karshiku* [of the *Kurshu* standard], in Dictionaries. One *Kurshu* is the fourth part of a *pulu*. And when there are twice ten *kowrees*, their amount, or joint weight, is called one *Kakinee*, four of which make one *punu*. This is the table of the *punu* standard, according to *Bhaskuru Acharyu*. [1]

and for application of criminal punishment.

But with respect to the [punishment enjoined for the] highest scale of crime, and the rest, we find: "When the fine amounts to a thousand *punus* "with eighty more, it then is equal to the highest scale [*Oottumu Sahusu*]: "The half of it is named as the fine for the middling scale, and the half of "that again, is laid down for inferior crimes."

General observations on punishment.

Moreover, if in any of the aforementioned crimes, prevention is not attainable, by fines regulated after the above specified scale, even a greater one may be imposed; according as Apustumbu says: "Punishment is said "to be for the sake of subduing crime; by it therefore let those bold in "crime be brought into subjection." Narudu again points out some exceptions in the punishment of confiscation of a man's all: "Even when "confiscation of all a criminal possesses is enjoined, it is not fit that the king "should take away his weapons, if a soldier; the beasts of burthen or "other [conveyance], of those who subsist by carrying for hire; the orna-"ments, of professional prostitutes; the musical instruments, of musicians; "or those implements by which artizans subsist; in short, any thing by "which any person gains his livelihood." Yanyuwulkyu declares the destination of a fine levied through injustice: "What has been obtained "through injustice by the king as a fine, having devoted it to *Vuroonu*, let "him give, with his own hands, increased thirty-fold, to *Brahmuns*." The meaning is, 'let him give thirty times as much to *Brahmuns*, having "vowed it to *Vuroonu*, through their mediation.'

1—As. Res. 5th, 96.

Conclusion.

Here ends the portion, called *Vyuvuharu Muyookhu*, of the Book *Bhugvutu Bhaskuru*, written by NEELKUNTHU, own son of SHUNKURU BHUTTU, he who had traversed the oceans of the *mimansa*, the head jewel of *Punditus*, son of *Bhuttu Narayun Soori*, *Juggutu Gooroo*, as requested by that ornament of the *Sunguru* dynasty, *Muharaj Adhiraj*, *Sree Bhugvuntu Devu*, the intense adorer of the lotos-eyed God, the firmly seated Raja of the noted city of *Bhurehu*, situated near the resplendent junction of the *Churmunvutee* and the *Turnija*, in the happy *Mudhyu Deshu* [1].

1—The last para : varies in almost all the copies : some omit it altogether and others take no notice of the place mentioned, which is at the junction of the Chumbul and the Jumna ; in the printed copy, part of the passage has been inserted at the end, and part at the conclusion of the Chapter on Inheritance, but is here thrown together.